reservations on national lands; to the Committee on Agriculture.

By Mr. UNDERHILL: Petition of the Central Federated Union of New York and Vicinity, protesting aganst the passage of the Kenyon-Sheppard bill; to the Committee on the Judiciary.

Also, petition of the American Federation of Labor, favoring the passage of Senate bill 3, for Federal aid to vocational education; to the Committee on Agriculture.

By Mr. WICKERSHAM: Petition of resident fishermen of Ketchikan, Alaska, praying for the passage of legislation prohibiting the setting of fish traps in the tidal waters of Alaska; to the Committee on the Territories.

By Mr. WILSON of New York: Petition of the National Academy of Design, of New York, protesting against any action on the part of Congress conflicting with the design set forth by the Washington Park Commission for the development of Washington; to the Committee on the Library.

Also, petition of the Italian Chamber of Commerce of New York, protesting against the passage of Senate bill 3175, for the restriction of immigration; to the Committee on Immigration and Naturalization.

By Mr. WOOD of New Jersey: Petition of the Presbyterian Synod of New Jersey, favoring the passage of legislation to enforce the proper observance of the Sabbath in the District of Columbia; to the Committee on the District of Columbia.

Also, petition of the Presbyterian Synod of New Jersey, favoring the passage of the Kenyon-Sheppard bill, prohibiting the shipment of liquor into dry territory; to the Committee on the Judiciary.

SENATE.

TUESDAY, *January 14, 1913.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. GALLINGER and by unanimous consent, the further reading was dispensed with and the Journal was approved.

PRAIRIE COUNTY, ARK., V. THE UNITED STATES (S. DOC. NO. 1005).

The PRESIDENT pro tempore (Mr. BACON) laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the findings of fact and conclusion filed by the court in the cause of Prairie County, Ark., *v.* The United States, which, with the accompanying paper, was referred to the Committee on Claims and ordered to be printed.

PRESERVATION OF NATIONAL ARCHIVES.

The PRESIDENT pro tempore. The Chair presents a communication from the president of the New Hampshire Historical Society——

Mr. GALLINGER. I ask that it may be read, so that it may go in the RECORD.

The PRESIDENT pro tempore. It will be read, as requested by the Senator from New Hampshire.

The communication was read, as follows:

WASHINGTON, D. C., *January 11, 1913.*

To the PRESIDENT PRO TEMPORE OF THE SENATE,
Washington, D. C.

SIR: At the annual meeting of the New Hampshire Historical Society, which was fully attended, on January 9, 1913, the society voted unanimously in favor of an appropriation by the Congress of the United States for the erection of a building for the preservation of the national archives at Washington.

As president of the society, I am directed to communicate to the Senate the fact that this vote was passed.

So urgent is the need, and so worthy the object, that I indulge the hope that at the present session a suitable appropriation will be voted by the Senate. I have the honor to be

Your obedient servant,

FRANK W. HACKETT,
President of the New Hampshire Historical Society.

Mr. GALLINGER. I move that the communication be referred to the Committee on Appropriations and be printed.

The motion was agreed to.

PETITIONS AND MEMORIALS.

Mr. GALLINGER presented petitions of the Union Evangelistic Committee of sundry churches of Nashua, and of the congregations of the Central Congregational Church, of Derry, and of the First Baptist Church of Nashua, all in the State of New Hampshire, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented a petition of White Mountain Council, No. 506, Knights of Columbus, of Berlin, N. H., praying that an appropriation be made for the construction of a public building in that city, which was referred to the Committee on Public Buildings and Grounds.

Mr. WORKS presented a memorial of sundry citizens of Los Angeles County, Cal., remonstrating against a reduction of the duty on sugar, which was referred to the Committee on Finance.

Mr. JACKSON presented a petition of sundry citizens of Montgomery County, Md., praying that an appropriation be made for the construction of a public highway from Washington, D. C., to Gettysburg, Pa., as a memorial to Abraham Lincoln, which was ordered to lie on the table.

He also presented a petition of sundry citizens of Princess Anne, Md., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. BRISTOW presented a petition of the congregation of the Metropolitan Presbyterian Church, of Washington, D. C., praying for the passage of the so-called Kenyon "red-light" injunction bill, which was ordered to lie on the table.

Mr. O'GORMAN presented a petition of sundry assistant inspectors of steam vessels at the port of New York, praying that they be granted an increase in their salaries, which was referred to the Committee on Appropriations.

He also presented a resolution adopted by the Board of Aldermen of Buffalo, N. Y., favoring the selection of the name "City of Buffalo" for one of the proposed new battleships, which was referred to the Committee on Naval Affairs.

Mr. LODGE presented the memorial of Joseph R. Churchill, of Dorchester, Mass., and a memorial of members of the Massachusetts Civic Alliance, remonstrating against the enactment of legislation providing for the parole of Federal life prisoners, which were ordered to lie on the table.

He also presented petitions of sundry citizens of West Newton and Newtonville, in the State of Massachusetts, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented a resolution adopted by the Woman's Club, of Fall River, Mass., remonstrating against transferring the control of the national forests to the several States, which was referred to the Committee on Forest Reservations and the Protection of Game.

He also presented a petition of sundry citizens of Lee, Mass., praying for the enactment of legislation providing for the protection and preservation of migratory birds, which was ordered to lie on the table.

Mr. WETMORE presented a petition of Nanaquaket Grange, of Tiverton, R. I., and a petition of North Scituate Grange, Patrons of Husbandry, praying for the establishment of agricultural extension departments in connection with State agricultural colleges, which were ordered to lie on the table.

NATIONAL AERODYNAMICAL LABORATORY.

Mr. WARREN, from the Committee on Appropriations, to which was referred the bill (S. 8053) to authorize the creation of a temporary commission to investigate and make recommendation as to the necessity or desirability of establishing a national aerodynamical laboratory, and prescribing the duties of said commission, and providing for the expenses thereof, reported it without amendment and submitted a report (No. 1107) thereon.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BRISTOW:

A bill (S. 8107) granting an increase of pension to Minnie A. Piety; to the Committee on Pensions.

By Mr. GALLINGER:

A bill (S. 8108) authorizing the purchase or acquisition of the aviation field at College Park, Md., and property adjacent thereto for aviation, maneuvers, and other military purposes (with accompanying papers); to the Committee on Military Affairs.

By Mr. McLEAN:

A bill (S. 8109) granting an increase of pension to Anna M. Thomas (with accompanying papers); to the Committee on Pensions.

By Mr. GUGGENHEIM:

A bill (S. 8110) authorizing the Secretary of War, in his discretion, to deliver to the city of Trinidad, Colo., two condemned bronze or brass cannon, with their carriages and a suitable outfit of cannon balls; and

A bill (S. 8111) authorizing the Secretary of War, in his discretion, to deliver to the city of Rocky Ford, Colo., two condemned bronze or brass cannon, with their carriages and a suitable outfit of cannon balls; to the Committee on Military Affairs.

By Mr. STONE:

A bill (S. 8112) to correct the military record of Patrick F. Carmody; to the Committee on Military Affairs.

By Mr. PERKINS:

A bill (S. 8113) to amend section 3221 of the Revised Statutes of the United States as amended by section 6 of the act of March 1, 1879; to the Committee on Finance.

By Mr. ROOT:

A bill (S. 8114) to prevent discrimination in Panama Canal tolls; to the Committee on Interoceanic Canals.

By Mr. O'GORMAN:

A bill (S. 8115) granting an increase of pension to Gail E. Plunkett (with accompanying papers); to the Committee on Pensions.

By Mr. GORE:

A bill (S. 8116) to amend the judicial system of the United States by increasing the membership of the Supreme Court of the United States; to the Committee on the Judiciary.

By Mr. OWEN:

A bill (S. 8117) for the relief of the Iowa Tribe of Indians in Oklahoma; to the Committee on Indian Affairs.

A bill (S. 8118) providing means for making effective the law relating to the publicity of campaign contributions, and for other purposes; to the Committee on Privileges and Elections.

CONSTITUTIONAL AMENDMENT RELATIVE TO IMPEACHMENT.

Mr. POMERENE. I introduce a joint resolution, and ask that it may lie on the table until I call it up on a subsequent day. I also ask that the joint resolution may be read.

The joint resolution (S. J. Res. 152) proposing an amendment to the Constitution relating to impeachment was read the first time by its title and the second time at length, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein):

First, that clause 5 of section 2 of Article I of the Constitution be amended so as to read as follows:

"The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment, except, however, that the Congress may provide by law for other methods of impeachment for all civil officers of the United States except the President, Vice President, and members of the Supreme Court."

Second, that clause 6, section 3, of Article I of the Constitution be amended so as to read as follows:

"The Senate shall have the sole power to try all impeachments. When sitting for that purpose Senators shall be on oath or affirmation. When the President of the United States is tried the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present; except, however, that the Congress may provide by law for other causes of impeachment than those now provided for and other methods for the trial of all civil officers except the President, Vice President, and members of the Supreme Court."

The PRESIDENT pro tempore. The joint resolution will lie on the table in accordance with the request of the Senator from Ohio.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. CATRON submitted an amendment proposing to appropriate $121,600 for the support and education of 400 Indian pupils at the Indian school at Albuquerque, N. Mex., and $124,600 for the support and education of 400 Indian pupils at the Indian school at Santa Fe, N. Mex., etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

Mr. GALLINGER submitted an amendment proposing to increase the appropriation for the salaries of the day watchmen at the parks in the District of Columbia from $720 per annum to $900 per annum, etc., intended to be proposed by him to the legislative appropriation bill, which was ordered to lie on the table and be printed.

Mr. MYERS submitted an amendment proposing to appropriate $18 to pay Henry McClain for services in carrying the mail between Carlton, Mont., and the Northern Pacific Railway station, from August 1 to September 13, 1907, etc., intended to be proposed by him to the general deficiency appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

He also submitted an amendment proposing to appropriate $25,000 for the extermination of the Rocky Mountain spotted fever, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

He also submitted an amendment proposing to appropriate $100,000 for surveying public lands in the State of Montana, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. GUGGENHEIM submitted an amendment authorizing the Secretary of the Interior to enroll Tilla A. Provost and her son Harold Provost upon the roll of the Nebraska Winnebago Indians, etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

He also submitted an amendment authorizing the Commissioners of the District of Columbia to strike from the plan of the permanent system of highways for the District of Columbia Crittenden Street NW., between Iowa Avenue and Seventeenth Street, etc., intended to be proposed by him to the District of Columbia appropriation bill, which was referred to the Committee on the District of Columbia and ordered to be printed.

Mr. OWEN submitted an amendment, proposing to appropriate $600,000, being the balance and final payment due the loyal Creek Indians on the award made by the Senate the 16th day of February, 1903, etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

Mr. PERKINS submitted an amendment, providing that the proceeds arising from the sale of the lands known as the Klamath River Indian Reservation shall constitute a fund to be used for the maintenance and education of the Indians and their children now residing on those lands, etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

IOWA INDIANS.

Mr. OWEN submitted the following resolution (S. Res. 429), which was read and referred to the Committee on Indian Affairs:

Resolved, That the bill (S. 8117) for the relief of the Iowa Indians, with the accompanying papers, including Senate Document No. 486, Sixty-second Congress, second session, be, and the same is hereby, referred to the Court of Claims for a finding of fact and conclusions of law, under the provisions of the act approved March 3, 1911, entitled "An act to codify, revise, and amend the laws relating to the judiciary."

RURAL BANKING SYSTEM IN VIRGINIA (S. DOC. NO. 1006).

Mr. FLETCHER. I ask to have printed as a document a proposed plan for the organization of a rural banking system in Virginia. It is a paper prepared by Charles Hall Davis, a distinguished attorney of Petersburg, Va. I make this request with the idea that it may be of use throughout the country. It is simply a plan on the subject of rural banks. It is not a very long paper, and I should like to have it printed as a document.

The PRESIDENT pro tempore. The Senator from Florida asks unanimous consent that the paper relative to rural banking may be printed as a Senate document. Is there objection? The Chair hears none, and it is so ordered. Are there any concurrent or other resolutions to be offered? If not, the morning business is closed.

MEMORIAL SERVICES FOR THE LATE REPRESENTATIVE W. W. WEDEMEYER.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced to the Senate that the House had passed a resolution appointing a committee of 15 Members, with such Members of the Senate as may be joined, to attend memorial services for Hon. WILLIAM W. WEDEMEYER, late a Representative from the State of Michigan, to be held at Ann Arbor, Mich.

Mr. TOWNSEND. May I ask to have laid before the Senate the resolutions which have just come from the House?

The PRESIDENT pro tempore laid before the Senate the following resolutions of the House of Representatives, which were read:

IN THE HOUSE OF REPRESENTATIVES,
January 11, 1913.

Resolved, That a committee of 15 Members of the House, with such Members of the Senate as may be joined, be appointed to attend memorial services for Hon. WILLIAM W. WEDEMEYER, late a Representative from the State of Michigan, to be held at Ann Arbor, Mich.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of this resolution, and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.

Mr. TOWNSEND. I offer the following resolution and ask for its immediate consideration.

The PRESIDENT pro tempore. The resolution will be read.

The resolution (S. Res. 430) was read, considered by unanimous consent, and agreed to, as follows:

Resolved, That a committee of six Senators be appointed by the President pro tempore, to join a committee appointed by the House of Representatives, to attend memorial services for Hon. WILLIAM W. WEDEMEYER, late a Representative from the State of Michigan, to be held at Ann Arbor, Mich., on January 26, 1913, at 2 o'clock p. m.

The PRESIDENT pro tempore appointed as the committee on the part of the Senate under the resolution Mr. TOWNSEND, Mr. SMITH of Michigan, Mr. JONES, Mr. KENYON, Mr. ASHURST, and Mr. POMERENE.

PANAMA CANAL TOLLS.

Mr. ROOT. Mr. President, I ask leave to give notice that on Tuesday next, the 21st of this month, immediately after the routine morning business, with the permission of the Senate, I shall make some observations regarding the rights and duties of the United States in respect of tolls for passing through the Panama Canal.

THE PRESIDENTIAL TERM.

Mr. CUMMINS. Mr. President, I desire to call the attention of the Senate to the unfinished business, which is the joint resolution (S. J. Res. 78) proposing an amendment to the Constitution of the United States, and to ask unanimous consent to fix a time for a vote upon the joint resolution. I feel, Mr. President, that in order to be fair to the Senator from Vermont [Mr. PAGE], who is in charge of the bill to be taken up immediately after the joint resolution is disposed of, I must do what I can to bring the joint resolution on for a vote.

I therefore ask unanimous consent that on Thursday of this week, immediately after the disposition of the routine morning business, Senate joint resolution 78 shall be taken up and considered continuously, and that a vote shall be taken upon it and upon all amendments that have been or may be offered to it during that legislative day.

Mr. GALLINGER. I will ask the Senator whether many Senators or any Senators have signified a desire to discuss the joint resolution?

Mr. CUMMINS. I have heard of but one Senator who desires to speak on the joint resolution who has not already spoken.

Mr. GALLINGER. I will say for myself, while I shall not discuss it I should like to hear some Senators who are better able and better prepared to discuss the question than I myself am, because my mind is unsettled at the present moment as to whether or not I shall vote for the joint resolution. I have been inclined to do so, but I am not quite certain as to whether I am sufficiently informed.

Mr. CUMMINS. I name this early date not because I am opposed to a somewhat later date, but I feel that the Senator from Vermont has a right to insist that I shall do everything in my power to bring the joint resolution to a vote, inasmuch as, having had unanimous consent for the consideration of his bill upon the disposition of this joint resolution, he can not move until we do vote upon the joint resolution.

Mr. GALLINGER. I quite sympathize with the view the Senator has expressed and his desire to be courteous toward the Senator from Vermont, yet I think the date the Senator suggests is too early. I think if the Senator would ask for a vote on the joint resolution upon some day next week, probably there would be no objection; say a week from Thursday.

Mr. CUMMINS. I will then change it to a week from Thursday. I think that would probably be satisfactory to the Senator from Vermont.

Mr. ROOT. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from New York?

Mr. CUMMINS. I do.

Mr. ROOT. I feel a little troubled about the prospect of having one of our hard and fast unanimous-consent agreements shut down the discussion of this proposed constitutional amendment. I am in favor of the principle of the amendment. I think I reported to the Judiciary Committee favorably the original joint resolution introduced by the Senator from California [Mr. WORKS] with some slight changes. That has now been reported to the Senate with still further changes. But it is a matter of very great importance, and it seems to me what we ought to do is to discuss it. I should like some course to be followed which would compel the mind of the Senate to be put upon this measure before we vote on it. It would be very unfortunate if we had to vote without having thought about it. Would not that purpose be answered by making it a special order for consideration without having an absolute time fixed?

Mr. LODGE. It is now the unfinished business and comes up every day automatically. A special order for its consideration is not required.

Mr. CUMMINS. I quite agree with the Senator from New York, but if we fix it for Thursday of next week, and then allow the legislative day for its consideration, there is no possibility of cutting off debate.

Mr. GALLINGER. If the Senator will permit me, in the meantime it comes up automatically at 2 o'clock each day until that time, and unless it is laid aside it can be discussed.

Mr. ROOT. I will agree to any course so long as we shall not find ourselves face to face to a vote without anyone having discussed it or our minds having been put on it.

Mr. CUMMINS. I may say that I intend, in the meantime, to make some observations on it.

Mr. WORKS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from California?

Mr. CUMMINS. I do.

Mr. WORKS. I was about to announce this morning, when the unfinished business should come before the Senate, that I expect to insist on its being kept before the Senate in order that it may be discussed, and not allow it to be passed over, as it has been, for weeks and weeks without anyone having said anything about it. That would give everyone an opportunity to express his views with respect to it.

But I agree with the Senator from Iowa that some time should be fixed for a vote. In the meantime I hope Senators will take the opportunity to discuss the joint resolution, because it is a very important measure. I have said all probably that I shall desire to say about it, but I shall hope to hear other Senators express their views upon this question, which I regard of much importance to the country.

Mr. BRISTOW. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Kansas?

Mr. CUMMINS. I yield to the Senator from Kansas.

Mr. BRISTOW. There are one or two Senators not present who I know are very much interested in the joint resolution, and if the Senator from Iowa will not press his request for unanimous consent for a vote, but simply bring up the measure as the unfinished business and insist upon its consideration for a day or two, I should think it would be more desirable.

Mr. CUMMINS. I do not feel that I can do that. The Senator from Kansas must, I am sure, appreciate the obligation that I feel toward the Senator from Vermont.

Mr. ROOT. The Senator from Iowa wishes to get the joint resolution out of the way.

Mr. CUMMINS. The Senator from Vermont had his bill, by unanimous consent, fixed for the time after the disposition of this joint resolution. He comes to me, naturally, and says, "You must keep the joint resolution before the Senate and have a vote upon it and dispose of it." I recognize the validity of that position. If we could have a time fixed for a legislative day in which we were to dispose of it, I think he would be wholly satisfied with that arrangement.

Mr. ROOT. Mr. President, we have been occupied during the whole of this session to a great extent with the trial of the impeachment case, so that there has not been any opportunity to consider and deal with other matters of serious importance. This subject broadens out in several directions. There is a joint resolution now in the hands of the Judiciary Committee relating to the change of the date of inauguration. That involves the broad question of the arrangement of our short term of the meeting of the old Congress, and legislation by the old Congress after the new Congress has been elected. I think there is a very general feeling that if we are to amend the Constitution in this particular, if we are going through the process of a constitutional amendment relating to the term of office of President, we ought to consider and deal with the present anomalous arrangement regarding the beginning of the presidential term and the beginning of the term of the new Congress elected at the same time with the President. As it now stands, we elect a President and a new Congress in the first week in November. Then, while this newly elected President and newly elected Congress stand about for four months waiting for their opportunity, the old President and the old Congress proceed with the government of the country. There are many inconveniences and evils arising from that arrangement. The reasons which led to the establishment of that long intervening period in the early history of the country no longer exist.

The whole subject is now treated in a report which is pending before the Judiciary Committee, and I think it ought to be considered at the same time that we consider this proposed amendment regarding the length of the term of the presidential office.

Mr. WORKS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from New York yield to the Senator from California?

Mr. CUMMINS. I thought I yielded to the Senator from Kansas [Mr. BRISTOW]. I do not want to give up my right to the floor.

Mr. WORKS. I should like to ask the Senator from New York what necessary connection he thinks there is between the mere fixing of the term and the time of the commencement of that term, and why the two should be considered together?

Mr. ROOT. Of course, Mr. President, we could change the length of the term without changing the time for its beginning, but if we are going through the process of a constitutional amendment about the term of the President, it certainly would be prudent to make whatever change we are going to make in one amendment and with one submission to the people.

Mr. WORKS. However, the amendments relate to different sections of the Constitution and can not be considered together. There would have to be a separate vote upon them, and they would necessarily have to be considered separately. I fail to see any connection between the two that would involve any joint discussion of them. The discussion of one or the other might retard action upon either, and might have some effect upon the passage of one or the other, which I think should not happen.

Mr. CUMMINS. I yield to the Senator from Kansas [Mr. BRISTOW], who rose a moment ago.

Mr. BRISTOW. Mr. President, I wanted to ask the Senator from Iowa not to press for unanimous consent for a vote to-day, but to content himself with having the matter taken up as the unfinished business, and to insist upon its consideration. That would be much more satisfactory to me, because, as I have said, I know of one or two Senators, who are not now present, who would like to be present before a positive date is fixed for a vote.

Mr. CUMMINS. I recognize that the Senator from Kansas can prevent a unanimous-consent agreement; but I think any Senator who wants to debate the joint resolution would have a better opportunity under my proposal than he would if it were taken up this afternoon.

In answer, however, to the Senator from Kansas, I will say that if the unanimous consent is not granted I shall feel it my duty to insist upon the consideration of the joint resolution at 2 o'clock, and that we proceed with it until it is acted upon, or until it is displaced by a vote of the Senate.

Mr. BRISTOW. I have no objection to the consideration of the joint resolution. Of course, I do not suppose the Senator from Iowa would want to unduly press it to a vote; but if he gets a vote within the next week or so, I suppose that would be acceptable.

Mr. CUMMINS. Mr. President, I do not think anyone can charge me with having unduly pressed the joint resolution. It has been the unfinished business for a long time. I tried very hard to get a vote upon it at the last session, as Senators know, and I think, when I have suggested that 10 days nearly shall elapse before we proceed with it, and then that the vote shall be taken during the legislative day named, I have given every opportunity to consider the question that fairness would require.

Mr. BRISTOW. If the Senator will defer his request until later in the day, I probably shall not make any objection to it; but I would rather it should not be pressed just at this time.

Mr. WORKS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from California?

Mr. CUMMINS. I do.

Mr. WORKS. In this connection I desire to give notice that, unless some time is fixed for a vote upon the joint resolution, I shall insist upon its being kept before the Senate. That will give every Senator an opportunity to discuss it, if he so desires; but it seems to me that it has been postponed long enough and that the Senate should consider it at this time. Of course, if a unanimous-consent agreement can be arrived at which will fix the time for voting, I have no objection to that at all; but otherwise, I repeat, I shall insist upon the regular order when the joint resolution comes up for consideration.

Mr. BRISTOW. For the present I shall have to interpose an objection to the fixing of the date proposed. I may withdraw that objection later on during the day when the Senator again brings up the joint resolution. For the present, however, I would rather not have that date fixed.

Mr. McLEAN. Mr. President——

Mr. ROOT. Mr. President, has morning business closed?

The PRESIDENT pro tempore. Morning business has closed. That announcement has been made, and the Senator from Connecticut [Mr. McLEAN] has been recognized. The Chair, however, will receive anything which Senators may now desire to offer by unanimous consent.

PETACA LAND GRANT.

Mr. ROOT. I ask leave to submit a report.

The PRESIDENT pro tempore. The report will be received, in the absence of objection.

Mr. ROOT. I am directed by the Committee on the Judiciary, to which was referred the bill (S. 7385) to relinquish the claim of the United States against the grantees, their legal representatives and assigns, for timber cut on Petaca land grant, to report it without amendment, and to submit a report (No. 1106) thereon.

Mr. CATRON. I ask unanimous consent for the immediate consideration of the bill just reported by the Senator from New York [Mr. ROOT].

Mr. BORAH. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Connecticut yield? The Chair had recognized the Senator from Connecticut, and he yielded for the introduction of morning business.

Mr. McLEAN. I understand I have the floor, Mr. President.

The PRESIDENT pro tempore. The Senator from Connecticut has the floor.

PROTECTION OF BIRDS.

Mr. McLEAN. Mr. President, as the bill in regard to which I desire to address the Senate is very short, I ask that the Secretary read it.

The PRESIDENT pro tempore. The bill referred to by the Senator from Connecticut will be read.

The Secretary read the bill (S. 6497) to protect migratory game and insectivorous birds in the United States, as follows:

Be it enacted, etc., That all wild geese, wild swans, brant, wild ducks, snipe, plover, woodcock, rail, wild pigeons, and all other migratory game and insectivorous birds which in their northern and southern migrations pass through or do not remain permanently the entire year within the borders of any State or Territory, shall hereafter be deemed to be within the custody and protection of the Government of the United States, and shall not be destroyed or taken contrary to regulations hereinafter provided therefor.

SEC. 2. That the Department of Agriculture is hereby authorized to adopt suitable regulations to give effect to the previous section by prescribing and fixing closed seasons, having due regard to the zones of temperature, breeding habits, and times and line of migratory flight, thereby enabling the department to select and designate suitable districts for different portions of the country within which said closed seasons it shall not be lawful to shoot or by any device kill or seize and capture migratory birds within the protection of this law, and by declaring penalties by fine of not more than $100 or imprisonment for 90 days, or both, for violations of such regulations.

SEC. 3. That the Department of Agriculture, after the preparation of said regulations, shall cause the same to be made public, and shall allow a period of three months in which said regulations may be examined and considered before final adoption, permitting, when deemed proper, public hearings thereon, and after final adoption to cause same to be engrossed and submitted to the President of the United States for approval: *Provided, however*, That nothing herein contained shall be deemed to affect or interfere with the local laws of the States and Territories for the protection of nonmigratory game and other birds resident and breeding within their borders, nor to prevent the States and Territories from enacting laws and regulations to promote and render efficient the regulations of the Department of Agriculture provided under this statute.

SEC. 4. That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purpose of carrying out the provisions of this act, the sum of $10,000.

Mr. McLEAN. Mr. President, this bill, as will be noted, was reported back to the Senate in April, 1912. It has been on the calendar nine months, during six of which Congress has been in session. I have not tried to hasten action upon this measure, for several reasons, I think it probable that few Senators outside of the members of the committee which considered it have had the time or the opportunity to inform themselves with regard to its provisions. It presents a subject in which but few Senators have heretofore taken any interest, and a subject which at first is likely to arouse antagonisms which I believe are wholly undeserved. But, Mr. President, I think the time has come now when it is my duty to ask the Senate to consider some of the reasons which are urged in support of this measure, for it has been made clear to me that thousands, and I think I may say millions, of our constituents believe this bill to be of as high promise and importance as any remedial measure now pending before Congress.

Before I come to the question of ways and means, I want to put into the RECORD some of the reasons why Congress should find ways and means to protect the bird life of the country, and although my personal interest in the subject is considerable and my conclusions have been reached after some years of observation, I shall not assume to take the time of the Senate to do more than call attention to the opinions of those who speak as experts and who have made birds and their habits a life study.

As it is highly probable that very few Senators have had the time to read the reports of the Senate and House committees, or the printed report of the hearings before the Senate Committee on Forest Reservations and the Protection of Game, bearing upon this subject, I will first call attention to some of the data and conclusions found in these reports.

Mr. LEE of Georgia, from the House Committee on Agriculture, has the following observations to make on pages 1 and 2 of his report on H. R. 36, a bill to protect migratory and insectivorous game birds of the United States:

The committee gave a public hearing and a large amount of testimony was produced before it to sustain the provisions of the bill. It appeared that most of the States of the Union have laws more or less

effective in the protection of game or other birds resident and breeding within their borders, and by special reservation in the bill none of its provisions are to be deemed to affect or to interfere with these laws as to such birds or to prevent the States from enacting laws and regulations in aid of the regulations of the Department of Agriculture provided for in this bill. Through these local laws, however, it appeared that because of their nomadic habits little or no real protection was afforded water fowl and other migratory game birds, and therefore, to secure for them adequate protection, particularly in the spring, when they are on their way to their nesting grounds, they should be placed under the custody of the General Government. It also appeared that some of the most valuable species of these nomads would soon be extinct unless immediate congressional protection is afforded.

It was clearly shown that the economic aspect was twofold. The game birds yield a considerable and an important amount of highly valued food, and if given adequate protection will be a constant valuable asset. The insectivorous migratory birds destroy annually thousands of tons of noxious weed seed and billions of harmful insects. These birds are the deadliest foe yet found of the boll weevil, the gypsy and brown-tailed moths, and other like pests. The yearly value of a meadow lark or a quail in a 10-acre field of cotton, corn, or wheat is reckoned by experts at $5. The damage done to growing crops in the United States by insects each year is estimated, by those who have made the matter a special study, at about $800,000,000.

The majority of the committee believe that to give Federal protection to these birds is no invasion of State rights, for being migratory they belong to no single State, but to all the States over which they pass and within which they simply pause for food, rest, or breeding. It is believed that the question is purely a Federal one and that under the strictest construction of the Constitution these migratory birds may and should be subject and entitled to national protection by act of Congress.

The report from the Senate committee, beginning at the bottom of page 2, argues the case for the birds in the following language:

Anyone who has read recent estimates of the decrease in insectivorous birds and the increase of herbivorous insects can readily believe that as the mammals succeeded reptiles insects will soon possess the earth unless some agency is discovered to check their increase.

We are prone to bear the usual and slowly accumulating burdens with dull resignation and patience. The life and property losses and taxes that are inherited and constant we take for granted. It is the concentrated and unusual calamities that shock and excite the spirit of opposition and the desire to prevent a recurrence. By the sinking of the *Titanic* 1,300 lives were lost, and the world was filled with fear and sympathy. Tuberculosis claims 190,000 victims a year in this country and pneumonia 160,000, yet we bear this awful loss of life with the passing comment that it is a great pity.

The San Francisco earthquake destroyed property to the value of $400,000,000. This loss was the superinducing cause of the panic of 1907, which reduced values by the billions. If it were known to-day that the country would suffer another such loss within its borders in the year 1912, the wheels of progress the world over would halt in sympathetic fear.

A short time ago the farmers of the country, especially in the Northwest, were much agitated because of the proposed reciprocity agreement with Canada. The loss which they, together with other farmers of the country, will suffer this year and which will benefit no one will exceed by hundreds of millions of dollars the total value of the entire wheat crop of the Nation.

As long ago as 1904 Dr. C. L. Marlatt, basing his estimates on the crop reports of the United States Department of Agriculture, asserted that the loss to the agricultural industries in that year caused by insects alone could be conservatively placed at $795,100,000, and this estimate does not include a dollar for the use of insecticides.

Mr. Forbush, in his most comprehensive book entitled "Useful Birds," maintains that the insect pests destroy agricultural products to the value of $800,000,000 a year. We use large numbers so freely in these days that hundreds of millions mean no more to us than hundreds of thousands did a few years ago. There are about 600 colleges in the United States to-day. Their buildings and endowments have been centuries in accumulation. The value of the college and university buildings is estimated at $260,000,000 and the endowments at $219,000,000. If they should be destroyed to-morrow—buildings and endowments—the insect tax of one year would replace them and leave a balance sufficient to endow 32 new universities in the sum of $10,000,000 each.

We have in this country to-day about 20,000,000 school children, and the cost of their education has become by far the heaviest tax laid upon the surplus of the country, yet it costs more by many millions to feed our insects than it does to educate our children. If there is any way in which this vast and destructive tax upon the national income can be prevented or stayed or resisted in any appreciable measure it would seem to be the part of wisdom to act without delay.

For many years individuals, at their own expense, and voluntary societies and representatives of the civilized nations the world over have studied and estimated the value of birds to the human race. We call attention at this time to but a few of the estimates made, and such as seem to be fair and reliable, but enough, we think, to prove that in this country at least we have ruthlessly disturbed, if not destroyed, one of nature's wisest and most valuable balances between the birds and their natural food, and it is clear to those informed upon this subject that unless radical and immediate measures are adopted to restore a sure, safe, and natural equilibrium between insectivorous birds and their foods the time will soon come when the annual loss caused by insects to agriculture in this country alone will be counted in billions instead of millions of dollars.

Most insects, like the green leaf louse, or aphis, so destructive to the hop industry and many other of our most valuable fruits and vegetables, reproduce their kind at the rate of ten sextillion to the pair in one season. This number means 40,000 for every square inch of land that is above water. Placed in Indian file, 10 to the inch, it would take light, traveling at the rate of 180,000 miles per second, 2,500 years to reach the file leader.

The potato bug is less fecund. One pair will reproduce from fifty to sixty millions only in a season. The natural increase of one pair of gypsy moths would defoliate the United States in eight years.

These estimates I quote from Prof. Forbush, who in turn gathered them from the United States Biological Survey, and we may say that these cases are fair examples of the reproductive powers of the insectile world. Locusts, army worm, and chinch bugs, unless checked in procreation, soon become countless hordes, devastating wide areas of the earth's surface.

It is to be remembered that insects live to eat. Some of them increase their size at birth 10,000 times in 30 days. Dr. Lintner, of the New Jersey Board of Agriculture, reports 176 species of insects attacking the apple tree. (U. S. Biological Survey.) About the same number attack the peach, plum, and cherry trees. Dr. Packard finds 400 species feeding upon the oak; 300 attack the conifera. The number feeding upon cereals, grains, and garden crops is also very large.

The reports of the Bureau of Entomology show that destruction by some insects is widely spread and are increasing. Dr. Mariatt estimates that the loss to the wheat-growing States in 1904 occasioned by the Hessian fly was about $50,000,000. Dr. Shinar estimates the damage done to crops in the Mississippi Valley caused by the chinch bug in one year as high as $100,000,000. The Rocky Mountain locusts, in years of their greatest activity, caused the States of the Northwest more than $150,000,000. Dr. Lintner estimates the annual loss to farmers caused by cut-worms at $100,000,000. The terrible loss of $800,000,000 a year is fairly easy of proof.

That the worm does not eat everything that grows is due to several causes—weather, parasites, fungi, insect diseases, insectivorous birds, and mechanically applied poisons, which are expensive, unnatural, and dangerous. However large may be the share of parasites, fungi, and weather in checking the increase of destructive insects, investigation shows that it is lamentably insufficient, and the briefs of the bird defenders pretty clearly indicate that the birds have been, are, and will be without question one of the most important agencies in staying the inroads of insect devastation. Men who have had this subject at heart and in hand for many years assert that bird life is one of the most indispensable balancing forces of nature.

We cite a few instances in support of the foregoing. All birds eat, and most of them eat most of the time, and they eat insects and little else. The old bird has just as keen an appetite as the young bird, and he is much larger and his daily ration is almost incredible.

Mr. Treadwell, of the Boston Society of Natural History, fed a young robin 68 angle or earth worms in one day. Mr. Nash, of the Ontario Department of Agriculture, fed a robin 70 cutworms a day for 15 days. A young crow will eat twice its weight a day of almost anything that happens to be brought before him. The State ornithologist of Massachusetts, Mr. Forbush, by careful and painstaking observation has collected much reliable information on this subject. He has seen two parent grosbeaks in 11 hours make 450 trips to their nests carrying two or more larvæ at a time. Sparrows, chickadees, vireos, martens, and warblers made from 40 to 60 trips an hour with their beaks filled with all manner of insects. Under the supervision of the United States Biological Survey the crops of 3,500 birds were examined. Thirty grasshoppers and 250 caterpillars were found in the crops of cuckoos. In the crop of a nighthawk were found 60 grasshoppers and in another 500 mosquitoes; 38 cutworms were found in the crop of a blackbird; 70 cankerworms were found in the crop of a cedar bird. Prof. Tschudi estimates the diet of a song sparrow at 1,500 larvæ a day.

Mr. Forbush estimates that a single yellow-throated warbler will consume 10,000 aphids or tree lice in a day. Scarlet tanagers have been seen to eat 35 gipsy moths a minute for 18 minutes at a time.

To quote further from Mr. Forbush on Birds:

"More than 50 kinds of birds feed upon different varieties of caterpillars; 38 varieties are known to feed upon devastating plant lice.

"Mr. McAtee, of the United States Biological Survey, reports that several of the most destructive species of scale insects are the food of not less than 50 kinds of birds. Beetles, cutworms, grubs, borers, locusts, grasshoppers, crickets, in fact most all of the injurious insects are food for a very great majority of the different kinds of birds.

"It is the general belief that the so-called game birds are seed rather than insect eaters. The fact is that the bulk of food of most of this class of birds consists of insects when insects are to be had.

"The quail, though not a migratory bird, and therefore not within the scope of the pending bill, should, however, be carefully protected by State legislation. It feeds upon locusts, chinchbugs, cotton worms, cotton-boll weevils, army worms, Colorado potato beetles, striped cucumber beetles, grasshoppers, ground beetles, and many others. The young feed almost entirely upon insects. Such seeds as they eat are largely those of the harmful weeds, as ragweed, smartweed, red sorrel, mercury, pigweed, and the like. If the quail can be protected and become numerous and fearless, they would become the most useful assistants and allies of the farmer.

"This is true in a great measure of the partridge or ruffled grouse, snipe, plover, sandpiper, woodcock, wood duck, and black duck, once so common all along the shores of our streams and pools. They were formerly great insect eaters, but they have been so persecuted by the hunters that they hardly now ever live there."

Prairie chickens, like the grouse and wild turkey, feed their growing young almost entirely upon insects, and the mature birds prefer this diet.

We quote from Prof. Forbush a few instances of crops saved from destruction by birds:

"In Pomerania an immense forest was in danger of being utterly ruined by caterpillars and was unexpectedly saved by cuckoos, which though on the point of migrating established themselves there for weeks and so thoroughly cleared the trees that next year neither depredators nor depredations were seen.

"In Europe, in 1848, there was a great outbreak of gypsy moths. The hand of man seemed powerless to work off the affliction, but on the approach of the winter titmice and wrens paid daily visits to the infested trees, and before spring the eggs of the moths were entirely destroyed.

"According to 'Reaumer,' the larvæ of the gypsy moth were at one time so numerous on the Limes at Brussels that many of the great trees were nearly defoliated. The moths swarmed like bees in the summer. If one-half of the eggs had hatched the following spring scarcely a leaf would have remained in these favorite places of public resort. Two months later scarcely an egg cluster would be found. This happy result was attributed to the titmice and creepers, which were seen busily running up and down the tree trunks.

"In 1892 Australia was afflicted with incursions of immense clouds of locusts. In Glen Thompson district several large flocks of ibis were seen eating the young locusts in a wholesome manner. Near Victoria swarms of locusts were seen in a paddock. Just as it was feared that all the sheep would have to be sold for want of grass, starlings, spoonbills, and cranes made their appearance, and in a few days made so complete a destruction of the locusts that but a few acres of grass were lost.

"When Utah was settled the first year's crop was almost utterly destroyed by myriads of crickets that came down from the mountains.

The first crop having been almost destroyed, they had sowed seed for the second year. The crop promised well, but when the crickets appeared the people were in danger of starvation. In describing the condition Mr. George Q. Cannon said: 'Black crickets came down by millions and destroyed our grain crops, promising fields of wheat in the morning were by evening as smooth as a man's hand—devoured by insects. At this juncture sea gulls came by thousands, and before the crops were entirely destroyed these gulls devoured the crickets, so that our fields were entirely free from them." Several times afterwards the crops were attacked by the crickets and were saved by the gulls.

"In 1865 locusts hatched out in countless numbers in Nebraska. Some fields of corn and wheat were entirely destroyed by them. A large field of corn near Dacotah City was literally covered with locusts, and there were indications that not a stalk would escape. About this time blackbirds appeared in large numbers and made this field their feeding ground. The locusts gradually disappeared. Although the crop had to be replanted, it was due to the birds that a crop was raised at all. Many fields were saved with but slight loss by the work of blackbirds, plover, quail, and prairie chickens.

"A severe outbreak of forest tent caterpillars occurred in New York and parts of New England in 1898. Thousands of acres of woodland were devastated, and great damage was done to the sugar-maple orchards of New York and Vermont. Birds—warblers, orioles, sparrows, robins, cuckoos, cedar birds, and many others—attacked the caterpillars vigorously, and by 1900 the plague had been so reduced that the injury was not seen.

"Increase of insects and damage by them follows destruction of birds. Frederick of Prussia, being particularly fond of cherries, was annoyed to see the sparrows destroying his favorite fruit. An edict was issued ordering sparrow extermination. The campaign against the birds was so successful that not only were the sparrows destroyed, but many other birds were either killed or driven away. Within two years cherries and most other fruits were wanting. The trees were defoliated by caterpillars and other insects, and the King, seeing his error, imported sparrows to take the place of those that had been killed.

"A few years since the harvests of France began to fail. A commission to investigate the cause of the deficiency was appointed by the minister of agriculture. This commission took counsel with experienced naturalists, and the deficiency was attributed to the ravages of insects that it is the function of birds to destroy. It seems that the French people had been killing and eating not only the game birds but the smaller birds as well. Birds' eggs had been taken in immense numbers. A single child had been known to come in at night with a hundred eggs. The number of eggs of birds destroyed in the country annually was estimated to be from eighty to one hundred millions. Before such persecution the birds were rapidly disappearing. As an apparent result of the destruction of the birds the vines, fruit trees, forest trees, grain and field crops were suffering much from destructive insects. It was concluded that by no other agency than the birds could the ravages of insects be kept down, and the commission called for prompt and energetic remedies to prevent the destruction of birds.

"The greatest losses from the ravages of the Rocky Mountain locust were coincident with or followed soon after the destruction by the people of countless thousands of blackbirds, prairie chickens, quail, upland plover, curlew, and other birds. This coincidence is significant at least. Prof. Aughey tells how this slaughter was accomplished. Vast numbers of them were poisoned with strychnine in and around the cornfields. It was done under the belief that the blackbirds were damaging the corn crop, but a great number of birds of other species were destroyed as well as the blackbirds.

"In Dakota County, in Nebraska, in one autumn not less than 30,000 birds must have been destroyed. Prof. Aughey writes thus of this destruction: 'Supposing that each of these 30,000 birds ate 150 insects daily, we then have the enormous number of 135,000,000 insects saved in this one county in one month that ought to have been destroyed by the agency of birds.' When we consider that most of these birds were migratory, and that they would have been busy in other regions the rest of the time in helping to keep down the increase of insects, the harm that their destruction did is beyond computation. The killing of such birds is not a local, it is a national, a continental loss."

All of the foregoing evidence goes to demonstrate the existence of a natural economic relation between these three orders of life. There is a sort of interdependence, and the existence of each one is dependent upon the existence of the others. But for the vegetation the insects would perish, and but for the insects the birds would perish, and but for the birds the vegetation would be utterly destroyed by the unchecked increase of insect destroyers.

Mr. GALLINGER. Will the Senator from Connecticut permit an interruption?

Mr. McLEAN. Certainly.

Mr. GALLINGER. The subject the Senator is discussing is one very near my heart, and I have been hoping the Senator would press this bill for consideration. I notice in the list of birds enumerated the wild pigeon. Does the Senator know where a live wild pigeon can be found to-day?

Mr. McLEAN. There are none; they are extinct.

Mr. GALLINGER. I think there is a stuffed one in the Smithsonian Institute, which is regarded as a curiosity. There was a time in my life when wild pigeons were so numerous in the country where I lived that we could pick them from the trees in the evening; the heavens were clouded with wild pigeons on certain days. And yet to-day, as I understand, there is not a live wild pigeon on this continent.

What is true of that bird is relatively true of a great many other very valuable birds, some of them song birds. The robins are being slaughtered, song birds of different kinds are being slaughtered ruthlessly, and we sit idly by and let it go on.

Last evening I spent an hour or two in looking over Hornaday's recent work on that subject, and I wish every Senator would peruse that book and ask himself the question whether the work the Senator is engaged in in trying to pass this bill is not one that ought to command the cooperation and support of every man in public life.

I am glad the Senator is discussing the subject in such an interesting way.

Mr. McLEAN. I will say that the book to which the Senator has referred, Mr. Hornaday's book, contains a photograph of the last survivor of its species—the wild pigeon—and that one is now dead.

Mr. GALLINGER. Yes; it does.

Mr. McLEAN. I call the attention of the Senate to the fact that Dr. Hornaday is conceded to be one of the great naturalists of the world. He is at present a director of the New York Zoological Park.

I will add here a few items bearing upon this subject which I have gathered since the printing of the Senate report.

Mr. William A. Lucas, dean of the American Game Bird Culture, is authority for the statement that—

If the present rate of ruthless destruction of our game birds is not checked, and vermin left to prey continually upon them, they will pass out of existence with the passing of this century.

From the publication of the Clifton Game and Forest Society of North America I desire to quote as follows:

Recent conquest of nature: When the last century opened, man's conquest of crude nature had not gone far except in scattered spots. An acroplane survey of the world showed in Europe, Asia, and America a few immense national clear farming spaces, but the earth was still almost like a Garden of Eden. Ocean swarmed with whale, seals, sea otter, and sea birds. Animal and vegetable life of Africa and America had achieved perfect balance. Africa swarmed with life, mostly monstrous floral and faunal survivals of the latter end of the Tertiary epoch, while the Quaternary bird, beast, and plant life of America was amazing. The buffalo of Africa and the bison of America perhaps equaled in number all the world's beef cattle of to-day. The measureless wild pastures were kept cropped and orderly by vegetable eaters, and the vegetarians were prevented from eating the world to a blank, greenless desert by the hungry flesh eaters, for one lion at a meal could swallow all that a buffalo had eaten in a year. In this way meat-eating animals paradoxically preserved the vegetarians by eating them; saved vegetarians from themselves, kept down their number, and thus saved plant life, for everything depends upon plant life, and plant eaters, left alone by man and other meat eaters, would surely make a desert of the earth for themselves.

Animals and primitive man: As for man and his primitive weapons, the animals regarded him as a kind of Adam in Eden, so little did they fear him. Daniel Boone had to beat bison off with sticks, and the first Boers of the Veldt were stopped for days at a time by great, curious, fearless herds.

Clearing the earth of nature: White man's travels, trade, bullets, and bacteria are turning Africa into a faunal desert, and weeds are taking the place of its great beautifully balanced floral world. America has been cut, cleared, and harrowed of most wild things until only man's good and evil, wheat and weeds, possess it. Where white man goes, either his weeds or his farms must follow. So that by the end of this century the zoological and botanical gardens will be the only place for the lover of nature to see the scant remains of the world's paradise of biologic centuries agone, when all here was a finely balanced, well-ordered Garden of Eden, an earth full of the plants and animals that the Bible tells about.

I quote now from Dr. Hornaday, whose opinions are entitled to great weight:

Show me one farmer or forester who goes out of his way and labors and spends money to protect and attract his feathered friends and I will show you 99 who never lift one finger or spend a penny a year in such work.

And again—

If there was anything I could say that would penetrate the farmer's armor of indifference and sting him into activity on this subject, I would quickly insert the stinger, even at my own cost and loss. Did you ever know a real sure-enough farmer to subscribe to a fund for game protection or to spend time and money in attending legislative hearings in behalf of bird protection and increase? I never did; I mean the real farmers who depend upon their crops for their bread and butter.

Regarding the killing of robins and other song birds as food for man in a land of plenty there can not be two opinions. It is not necessary; it is not "sport"; it is very injurious to our farmers and fruit growers, and entirely reprehensible. No self-respecting man or boy can be guilty of such wrongdoing; no civilized community should tolerate it; and no farmer can afford to permit it. I would rather that any friend of mine should be caught stealing sheep than killing robins for food or "sport."

Because negroes of the South and others who know no better are disposed to kill robins and flickers and other valuable birds is no reason why we should either destroy or permit the destruction of our best friends.

Every one of the perching birds is worth its weight in gold to the farmer. It will indeed be a sad day for the American agriculturist when the last insect-destroying bird is brought fluttering and dead to the ground; then, if never before, will he appreciate the value of the allies he has lost forever; then, indeed, when it is too late will he be willing to exchange any quantity of berries or cherries for just one pair of living robins, catbirds, or other birds so despised and neglected to-day.

It is interesting to note here that in six States—Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Maryland—the robin is a game bird and is killed by the tens of thousands annually. In Louisiana, South Carolina, Tennessee, and Pennsylvania the blackbird is legally killed without limit, although it is recognized as one of the most effective destroyers of the harmful insects and worms. In 26 of the States the "mourning" or "turtle" dove has no protection from slaughter, although it is well known to feed chiefly on weed seeds. In many of the States the spring shooting of wild water fowl extends far beyond reasonable limits. In Virginia the season does

not close until May 1; in Maryland, April 10; Delaware, April 10; West Virginia, April 20; Indiana, April 15; Illinois, April 15; Nebraska, April 15; South Dakota, April 10; Pennsylvania, April 10; New Jersey, March 15; Rhode Island, March 31; North Carolina, March 31. It will be observed that in a line of States covering the entire flight of these birds shooting is allowed from the 1st of September until the 1st of May.

Dr. Joseph Kalbfus, secretary of the board of game commissioners, of Harrisburg, Pa., in his report of November 15, 1911, says:

It is sad, indeed, to consider how many there are in all walks of life who still fail to understand the work being done by sportsmen or the necessity for that work.

This is a condition brought to my notice almost daily, and I am writing this bulletin in the hope that I may say something that will cause you who may read it to take an interest in bird protection, and I care not whether the motive be religious, economic, æsthetic, humane, pathetic, or what not, only so you do something for the birds now; not after awhile, but to-day, before it is too late. How much better it would have been for this State and Nation if the question of forestry had been intelligently considered 40 or more years ago instead of now. How much better it would have been if the State had long ago thrown around her fisheries and her water supply and the health of her people the strong arm of protection that she is now attempting to extend. Our birds, once extinct, are gone forever. Remember that.

To the great majority of people birds are simply birds and nothing more; they are of no special value, either singly or collectively, because so many of us, although we have eyes, "see not." That is, we do not understand what the birds are doing. We fail to realize that birds are found everywhere throughout the known world, excepting in the center of the great deserts, and that no difference where they are found each family is doing a special work in its own peculiar way that no other family attempts to do except to a limited extent.

I some time ago had occasion to arrest one of this class, a trucker living near Harrisburg, for killing 12 robins in his cabbage patch. He admitted the killing, and said: "These birds were deliberately pulling up and destroying my cabbage plants; I know what I saw." A visit to this cabbage patch showed that many of the plants had been destroyed in some way. I saw robins vigorously pulling at and casting aside numerous plants, and it appeared from a distance that they were really doing a wrong. A closer examination demonstrated the fact that not a single root had been pulled from the ground. Every missing plant had been cut from the root below the ground line by wireworms, the larvæ of the clock beetle, not cutworms. I examined the hills where many plants had stood and took from the ground with my hands wireworms in numbers varying from 3, the least found at any place examined, to 43, the most found around any plant. These birds were doing a work for this man that he could not do for himself and at the same time gathering food for their young; and this person, calling himself a good citizen, had, without thought, without an examination, deliberately murdered these birds and left their little ones to starve in the nest. His attorney, who was with me, when shown the worms, said: "Doctor, he did not understand." This lack of understanding is the great trouble. If men only understood what the birds were doing they would not treat them as they do.

The cuckoo and the oriole appear to be created specially to destroy hairy caterpillars. The great naturalist, Audubon, writing of these two birds, said, "Their stomachs are lined with hair." And the dissection of the stomachs of either of these birds during the warm summer days will frequently show this statement to be true, a closer investigation demonstrating that while hair is found apparently growing upon the inside of the stomach it is really not the product of the stomach, but is instead the hair from the caterpillars eaten by the bird, each hair having perforated the inner lining of the stomach and remaining in that place, dissolved by the juices of the bird's stomach.

Dr. Kalbfus in this report quotes from the Biological Survey of the Department of Agriculture as follows:

Each family of our birds, almost without exception, is doing a work peculiar to itself; a special work that is of great value to the farmers and fruit growers of the Nation and that entitles each family of birds to protection.

In Farmers' Bulletin No. 497, issued May 6, 1912, William L. McAtee and F. E. L. Beal, assistants, Biological Survey, make the following report as to the value of upland plover and killdeer on pages 14 to 18, inclusive:

The upland plover forms a striking exception in habits to its closest relatives, the sandpipers. While sandpipers love the vicinity of water, the upland plover frequents dry hills and prairies and is most abundant in the interior. This so-called plover breeds from Oregon, Oklahoma, and Virginia north to Alaska, Mackenzie, and Maine, and migrates over the more southern parts of the continent, passing to the pampas of Argentina to spend the winters.

From its habits the upland plover would naturally be expected to have a closer relation to agriculture than most sandpipers, and such proves to be the case. Almost half its food is made up of grasshoppers, crickets, and weevils, all of which exact heavy toll from cultivated crops. Among the weevils eaten are the cotton-boll weevil; greater and lesser clover-leaf weevils; clover-root weevil; *Epicærus imbricatus*, which is known to attack almost all garden and orchard crops; cowpea curculios; *Tanymecus confertus*, an enemy of sugar beets; *Thecesternus humeralis*, which has been known to injure grapevines; and bill bugs. *Thecesternus* alone composes 3.65 per cent of the seasonal food of the 163 stomachs examined, and bill bugs constitute 5.83 per cent. No fewer than eight species of bill bugs were identified from the stomachs. These weevils injure, often seriously, such crops as corn, wheat, barley, and rye, as well as forage plants of many kinds.

The upland plover further makes itself useful to the farmer by devouring leaf-beetles, including the grapevine colaspis, southern corn-leaf beetles, and other injurious species—wireworms and their adult forms, the click beetles, white grubs and their parents, the May beetles, cutworms, army worms, cotton worms, cotton cutworms, sawfly larvæ, and leatherjackets or crane-fly larvæ. They befriend cattle by eating horseflies and their larvæ, and cattle ticks. They eat a variety of other animal forms, such as moths, ants, and other Hymenoptera, flies, bugs, centipedes, and millepedes, spiders, snails, and earthworms. Practically 97 per cent of the food consists of animal matter, chiefly of injurious and neutral forms. The vegetable food comprises the seeds of such weed pests as buttonweed, foxtail grass, and sand spurs, and hence is also to the credit of the bird.

Notwithstanding that the upland plover injures no crop and consumes a host of the worst enemies of agriculture, it is one of the numerous shore birds that have been hunted to the verge of extinction. Can it be that the American public will allow one of the best friends of agriculture to be exterminated by hunters who care only for the momentary excitement of dropping these swiftly flying birds and the pleasure of devouring the few mouthfuls of savory flesh they afford?

The killdeer is one of the best-known American birds. It frequents cultivated lands and even roads and the vicinity of buildings. It is well named "vociferous," for it delights in repeating the loud and penetrating call of "kill-dee, kill-dee," from which its common name is taken. The killdeer nests throughout the United States and southern Canada. Some individuals spend the winter in the southern half of the United States or occasionally even farther north, while others go as far south as northern South America.

Like the upland plover, the killdeer spends much of its time away from water. It frequently nests in cornfields or pastures and, as noted above, even comes about the abode of man. These preferences naturally influence the food habits of the species, affording it an opportunity to destroy insects which are directly related to agriculture. The food of the killdeer is varied, being composed of the following principal items: Beetles, 37.06 per cent; other insects, as grasshoppers, caterpillars, ants, bugs, caddis flies, dragon flies, and two-winged flies, 39.54 per cent; and other invertebrates, as centipedes, spiders, ticks, oyster worms, earthworms, snails, crabs, and other crustacea, 21.12 per cent. Vegetable matter composes 2.28 per cent of the total food, and is chiefly made up of weed seeds, such as buttonweed, smartweed, foxtail grass, and nightshade.

Among the injurious beetles consumed are the following weevils: Alfalfa weevil, cotton-boll weevil, clover-root weevil, clover-leaf weevil, rice weevil, cowpea curculio, white-pine weevil, and bill bugs. The latter alone constitute more than 2 per cent of the whole food. The alfalfa weevil, a new and destructive pest, is relished by the killdeer, 41 being found in a single stomach. Other destructive beetles devoured are white grubs and their adult forms, the May beetles; wireworms and their imagos, the click beetles; larvæ of the genus *Ligyrus*, which attack sugar cane, corn, and carrots; brown-fruit beetles, which injure apples and corn; the grapevine leaf-beetles; southern corn-leaf beetle; two-striped tortoise beetle, which injures sweet potatoes; and a flea beetle which attacks tobacco and sugar beets.

Cicadas, buffalo tree hoppers, and negro bugs, the last named injuring parsley and raspberries, are some of the true bugs relished by the killdeer. Caterpillars are a favorite article of diet, and several very injurious species are eaten, as the cotton worm, cotton cutworm, other cutworms, and caterpillars of the genus *Phlegethontius*, which damage tomatoes and tobacco. Grasshoppers and crickets, including mole crickets, are a staple food. Two-winged flies or Diptera furnish 11.91 per cent of the food of the killdeer. Such pests as crane flies and their larvæ, known as leatherjackets, are eaten, as well as horseflies and mosquitoes and their larvæ. One stomach contained hundreds of larvæ of the salt-marsh mosquito (*Aëdes sollicitans*), which is one of the most troublesome of the biting species. The State of New Jersey has spent thousands of dollars in trying to reduce the numbers of this pest. The killdeer thus befriends man, but it does something also for the domestic animals, not only by eating horseflies and mosquitoes, as just mentioned, but also by preying upon ticks, including the American fever or cattle tick, which has caused such enormous losses in some parts of the South.

Crawfish, well-known pests in levees and even in corn and other fields in certain localities, are another item of the killdeer's food, and 3.62 per cent of the subsistence of the 229 birds examined was composed of worms of the genus *Nereis*, which prey upon oysters.

In all, 97.72 per cent of the killdeer's food is composed of insects and other animal matter. The bird preys upon many of the worst crop pests and is a valuable economic factor. There can be no logical reason for continuing to regard it as a game bird.

I will now quote from the Craftsman, which notes an instance in the experience of Germany in its modern scientific bird conservation:

Baron Von Berlepsch, called the father of modern scientific bird conservation, has equipped his large estate at Seebach as an experimental station for bird protection. His methods of feeding, his skill in imitating the natural holes found in old trees that birds use for nesting purposes, his clever and sympathetic way of making birds that nest in the grass, bushes, thickets, tall trees, dead trees, clay banks, etc., feel at home are copied by many other landowners. And the wisdom of his protection has been thoroughly proved—

Says the Craftsman—

for at times when adjoining estates were ruined by insect pests his were fresh and unharmed. His fields and his orchards, which were supplied with nesting boxes, were free from noxious insects and caterpillars when all the rest of the neighborhood suffers from these pests.

Mr. John Davey, the celebrated tree surgeon, asserts:

That approximately $100,000,000 loss is caused in the United States yearly by reason of the decrease in the number of native song birds and the increase in the activities of the human—or, rather, inhuman—tree butcher. If we could get plenty of native song birds, no trees would be troubled by insects.

I desire here to call attention to two letters printed in the report of the hearings before your committee, one from Texas and one from Alabama, as follows:

AUSTIN, TEX, *March 2, 1912.*

AMERICAN GAME PROTECTIVE AND PROPAGATION ASSOCIATION,
111 Broadway, New York City.

Impossible to be present at hearing of protective bills before congressional committee. Migratory birds belong to no State, and no State has right to slaughter them at cost of other States. It is purely Federal question, and Congress, under most strict construction of Constitution by Democrats like myself, can not avoid conclusion that interstate birds are as interstate commerce. An open season for wild ducks all the year in Texas and a closed season for them in States lying north is an absurdity. We kill them as they leave and kill them as they come from Mexico on their way to their nests.

W. G. STERETT,
Game, Fish, and Oyster Commission of Texas.

DEPARTMENT OF GAME AND FISH,
Montgomery, March 10, 1912.

AMERICAN GAME PROTECTIVE AND PROPAGATION ASSOCIATION,
111 Broadway, New York City.

DEAR SIRS: I am in receipt of your favor of the 8th, and have also received a communication from Senator McLEAN. Every possible energy I possess will be exercised in bringing all available influences to bear on every Member of Congress of my acquaintance, to the end that the McLean and Weeks bills may be favorably reported and successfully passed.

I have been informed by Senator McLEAN that there is opposition to these bills by many Members of Congress, originating by objection on the part of those who are opposed to Federal interference with powers now exercised by the States. This hostility we must overcome.

I believe that by the promulgation of educational propaganda circulated through the medium of the press of the Nation sufficient sentiment will be generated among the people to cause the various constituents of the different Members of Congress to bring compelling pressure upon their Congressmen, causing them to disregard the idea that the Nation has no right to interfere with what certain Congressmen believe to be States rights. This contention does not apply in any sense, in my opinion, to migratory birds.

I practiced law for a number of years, and was likewise a member of the legislature for several terms, and I have studied these questions. I do not believe that there is unconstitutional inhibition against Federal legislation for the protection of birds of passage.

I inclose herewith a copy of a telegram I sent to the chairmen of the Senate and House committees having jurisdiction of the bills which we are urging for passage.

Very truly, yours, JOHN H. WALLACE, Jr.,
Commissioner.

I will add to these letters a few extracts from the report of the Alabama department of game and fish, bulletin No. 3, March, 1912:

[Alabama Department of Game and Fish, Bulletin No. 3.]

CONSERVATION OF THE GAME, BIRDS, AND FISH OF ALABAMA—THE DUTIES OF GAME WARDENS DEFINED, BY JOHN H. WALLACE, JR., STATE GAME AND FISH COMMISSIONER.

THE CONSERVATION OF OUR NATURAL RESOURCES.

The progress so rapidly made in the various States looking to the preservation of the natural resources of the American Continent is a cause of delight to every naturalist and sportsman, and to all patriotic citizens anywhere and everywhere.

Perhaps no nation has ever been so abundantly endowed with the blessings of forests, mines, waterways, game, birds, and fish as the citizenship of the United States. The splendid abundance of these necessities, comforts, and luxuries of life in pristine times caused our people to prosecute a campaign of relentless annihilation upon the treasures of nature's storehouse, believing that the supply could not be exhausted.

As the star of civilization wended its relentless way toward the golden West the forests were destroyed, and the land that once had been the haunts of the deer, the bear, and the bison became transformed into fertile fields, dotted with happy homes, while the trackless wilderness blossomed at the touch of the peaceful industry of the American husbandman.

Game and birds constituted the principal part of the daily food of the early settlers. Found in its primeval abundance, the wild life of the American Continent was not deemed necessary of protection, even during the breeding season; it was not until many of our most valuable species of birds and game were slaughtered to the point of extermination did our people comprehend the immense value of the natural assets.

LOCAL GAME LAWS FAILURES.

The first effort toward game and bird preservation contemplated protection by the enactment of local laws. These statutes were most conspicuous and pronounced failures, and were openly and notoriously violated on every hand. The cause of such persistent infraction is palpable; there was no specially constituted service to enforce these statutes; no one felt called upon to prosecute his neighbor; and while all agreed that the birds and game should be protected, yet local laws were annulled by the grand juries and abrogated by the petit juries, and still the campaign of relentless destruction continued to be ceaselessly waged.

DOVE BAITING A BARBAROUS PRACTICE.

Formerly, it was the custom to scatter wheat or other provisions on fields for the purpose of attracting doves in large numbers. This practice served to collect in close proximity to the baited field practically all the doves within a radius of 50 miles. At an appointed time, hunters in great numbers would repair by daybreak to the baited field, and the rapid discharge of firearms could be likened unto the raging of a mighty battle. As many as 6,000 doves have been bagged in one field in Alabama in a single morning. Probably one-fourth more were fatally shot, being so badly wounded that they were unable to fly but a short way, only to die. The baiting of fields is but a relic of barbarism, and no surer method is conceivable by which doves can be speedily exterminated than the pernicious practice of baiting fields. This custom has been practically stopped in Alabama, and doves have rapidly increased.

THE PROTECTION OF MIGRATORY BIRDS.

As a reciprocal obligation which is due by us to those who reside in the North, migratory game birds should be protected by the Southern States. Were it not for the fact that during the nesting and breeding season these birds are protected, it would not be long before there would be no birds to migrate during the autumn and winter seasons to this section. Birds know no State lines, and, so far as the preservation and protection of those that belong to the migratory family is concerned, it is a national and not a State question.

A few of our citizens have objected to the protection of robins. These birds nest to the north in orchards and in the immediate vicinity of the homes of citizens; they are much loved on account of their friendliness to man and because of their sweet songs during the spring. Formerly, robins were slaughtered by millions in the South, and oftentimes were fed to hogs. The sensation of horror that must have been felt by the people whose sweetest songbird is the robin would be much akin to that which we would experience if our mocking bird, the Southland's sacred songster, should migrate to Cuba and be there butchered, as robins were formerly in Alabama.

NATIONAL UNIFORMITY NEEDED.

The most imperative need of the present is a uniformity of game and bird laws applying to the States in the same latitude. Likewise national legislation should be had looking to the preservation of migratory birds, in their northern and southern migratory passage through the country, as they do not remain permanently the entire year within the borders of any particular State or Territory. These nomads should be placed within the custody and protection of the Government of the United States. The Department of Agriculture, at Washington, should be authorized to adopt suitable regulations looking to this end by prescribing and fixing closed seasons on game birds which migrate, having due regard to the zones, temperature, breeding habits, and times and lines of migratory flight.

On account of the variability of the statutes relating to the protection of migratory birds in the various States, little or no protection is afforded waterfowl and migratory song and insectivorous birds. In order that many of the most valuable species of migratory birds be saved from extinction, immediate congressional action is imperative.

PROVISIONS UNDER WHICH GAME IS BEST RESTRICTED.

By disarming the pothunter, and quelling his rapacious appetite to slaughter game for the purpose of selling it, by taking out of the fields and forests the vast black horde of negroes that formerly slaughtered game in many sections of the State, almost to the point of extinction, by the prevention of the shipping of live game and dead from our State, and in fact, by placing hunting within the reach of only those who should hunt, we have guaranteed not only to the present generation a fair supply of game and birds, but have assured to those yet to be a priceless benefaction under these splendid statutes.

SONG AND INSECTIVOROUS BIRDS THE FARMER'S FRIENDS.

As a result of scientific research of the most extended nature it has been ascertained that the cause of the prevalence of many maladies and the problem of weed control is largely attributed to the slaughter of insectivorous birds, which in the past have been wantonly murdered by the millions. Birds annually destroy thousands of tons of noxious weed seeds and billions of harmful insects; they were designed to hold in check certain forces that are antagonistic to the vegetable kingdom. The Mexican boll weevil which has made such desperate ravages on the cotton fields of Texas is steadily marching into Alabama, and it has been ascertained that birds are its deadliest enemies. A noted French scientist has asserted that without birds to check the ravages of insects human life would vanish from this planet in the short space of nine years; he insists that insects would first destroy the growing cereals, next would fall upon the grass and upon the foliage, which would leave nothing upon which cattle and stock could subsist.

The possibilities of agriculture having been destroyed, domestic animals having perished for want of provender, man, in his extremity in a barren and desolate land would be driven to the necessity of becoming canabalized or subsisting exclusively on a diet of fish. Even granting that only a portion of what the eminent Frenchman asserts is true, it is easy to glean from this theory that birds are man's best allies and should be protected not only on account of their innocence, bright plumage, and inspiring songs, but because they render to the farmer valuable assistance every day.

The wholesale slaughter of our song and insectivorous birds, which was so persistently waged in the past, has been practically stopped; even in the cities where birds were curiosities they are now seen in large numbers to the delectation of the inhabitants who delight to hear once more the clear, sweet notes of the trilling songsters of the forests.

SAVE THE BIRDS.

Those who love Alabama, who glorify her splendid history, who delight in her imperishable traditions, and who take pride in her boundless natural resources are eager to preserve and protect all that combine to fashion our magnificent State.

The principal vocation of our brave and patriotic people is agriculture, which is one of the most ancient and honorable arts known to man. Upon the yield of our fields depends the happiness and prosperity of our citizens. When there are abundant crops of fleecy cotton and our garners are full of golden grain the anthems of contentment and the cadences of joy resound throughout our realms and all the world seems set to a tune that is played by happy hearts.

We are assisted in making good crops by an army of feathered friends that work for the husbandman without pay. The part that birds play in protecting farmers from the ravages of injurious insects that prey upon the crops and orchards would be well understood if all the bright colored, harmless songsters of the trees should be exterminated. Without birds our fair State would soon become not only nonproductive, but absolutely uninhabitable.

Cruel men and wanton boys sometimes shoot for sport man's feathered allies. It would be cheaper if the rifle that discharged the shot were loaded with a golden bullet and fired into the sea. Boys were erstwhile allowed to catch and sell young mocking birds and redbirds for 50 cents each. The State is made at least $100 poorer by the act. It would be more economical in the end to give away a golden bird of the same weight. The meadow lark or each one of a bevy of quail in a 10-acre wheat, corn, or cotton field each earns $5 in a single season as an insect destroyer.

Every precaution is taken by us to prevent a thief from stealing even the most trifling of our possessions, but we are oblivious of any effort to dissuade the gunner from shooting birds upon whose existence depends our very livelihood.

Let us unite every energy we possess to save our friends, the birds, from destruction; if we do this, soon every bush will contain a singer, and every tree a choir.

I desire at this point to put into the RECORD a list of the States represented officially before your committee in favor of the pending legislation:

Forty-four of the 48 States of the Union were represented at the committee hearing by letter or in person either through their governors or their State game commissioners, or through representatives of sportmen's associations, National Association of Audubon Societies, the American Game Protection and Propagation Associations, the Boone and Crockett Clubs, the League of American Sportsmen, the New York Zoological Society, and other national associations interested in the protection proposed by the bill. All favored this legislation being added

to the Federal Statutes. Three of the States—Oklahoma, New York, and Massachusetts—have indorsed the proposition by legislative act.

Alabama: State game and fish commissioners.
Arkansas: State game warden.
California: Board of fish and game commissioners.
Colorado: Game commissioner, and letter from Gov. Shafroth.
Connecticut: Commissioner of fish and game.
Delaware: Board of game and fish commissioners.
Georgia: Fish and game protective association.
Idaho: Letter from Gov. Hawley.
Illinois: State game commissioner.
Indiana: State fish and game commissioner, and letter from Gov. Marshall.
Iowa: State fish and game warden.
Kansas: State fish and game warden.
Kentucky: Fish and game commissioner.
Maine: President Maine Fish and Game Associations.
Maryland: State fish and game warden.
Massachusetts: Fish and game commission.
Michigan: State game, fish, and forestry warden, and letter from Gov. Osborn.
Minnesota: Minnesota Game and Fish Commission, and letter from Gov. Eberhart.
Mississippi: State game warden.
Missouri: State game and fish department.
Montana: State game warden.
Nebraska: Chief game warden.
New Hampshire: Board of fish and game commissioners.
New Jersey: Fish and game commissioners.
New Mexico: Game warden.
New York: Board of fish and game commissioners, and letter from Gov. Dix.
North Carolina: President North Carolina Audubon Society.
North Dakota: Letter from Gov. Burke.
Ohio: Chief fish and game warden.
Oklahoma: State game and fish warden, and letter from Gov. Cruce.
Oregon: Fish and game commission, and letter from Gov. West.
Pennsylvania: Board of game commissioners.
Rhode Island: Chairman of bird commission.
South Carolina: Chief game warden.
South Dakota: State game warden, and letter from Gov. Vessey.
Tennessee: State game warden.
Texas: Game, fish, and oyster commissioner, and letter from Gov. Colquitt.
Utah: Fish and game commissioner, and letter from Gov. Spry.
Vermont: Department of fisheries and game.
Virginia: Secretary Game Protective Association.
Washington: Fish and game commissioner.
West Virginia: West Virginia State forest, game, and fish warden.
Wisconsin: State game warden, and letter from Gov. McGovern.
Wyoming: Letter from Gov. Carey.
Nova Scotia: Chief game commissioner.

Also resolutions of the Legislatures of Oklahoma, New York, and Massachusetts, urging the enactment of the Senate bill.

And now, Mr. President, I come to the question of ways and means. I shall expect very few Members of this body will object to the ends sought to be accomplished by this bill, but I must expect that every Senator will want to know by what authority Congress seeks to establish its right to enact the proposed legislation. I shall not attempt to discuss this branch of the subject at any length at this time. I simply desire to call the attention of the Senate to a few suggestions which have led me to the conclusion that this law does not offend the Constitution.

When this question was first brought to my attention, more than a year ago, the friends of the bill suggested that Congress might go for its authority to that apparently inexhaustible mine of legislative indulgencies—the interstate-commerce clause of the Constitution. We must all admit, I think, that this clause is now held to include authority to protect the health, safety, and morals of the people in ways not anticipated by the founders, but I do not believe that it is necessary to go to that source to find constitutional support for the bill now under consideration.

It has been suggested to me by others that this bill can be defended under the grant of power to lay taxes and provide for the common defense. If the destruction caused by insects should increase during the next 20 years as rapidly as it has increased since 1893, it is urged that we may well reach a condition so desperate that the protection of the Nation against insects will be as necessary and justifiable as is now the protection of the people against contagious diseases and hostile fleets. Congress is to-day spending millions of dollars annually in ineffective efforts to protect certain portions of the country against the ravages of the army worm, boll weevil, gypsy moth, and so forth. No one will question the wisdom or legitimacy of these appropriations. If Federal aid can be invoked to restrain the ravages of migratory insects, it is asserted that Congress must have authority to use any and all legitimate means to accomplish this purpose, including the protection of birds which destroy insects more effectively and at less expense than any other instrument which it is possible for the Government to employ. Would such protection on the part of Congress be any further from the anticipations of the founders than scores of other laws now in force? For instance, than the laws which defend and protect the youth of the country against the contaminating influence of unwholesome literature, the authority for which is found in the power to establish post offices and post roads? These laws, when first proposed, were denounced as unconstitutional and void by both Mr. Webster and Mr. Calhoun, who in their day represented both horns of the constitutional dilemma upon which the Nation was impaled, until rescued by Marshall and others who had the good sense to perpetuate in the Constitution the spirit, as well as the language, of its framers.

These suggestions are worth considering, but as it is my firm belief that Congress is competent to enact this law without the aid of either of the grants of power to which I have referred, I will not discuss them further. When I have what I believe to be a good excuse I do not care to cloud it with what may prove to be an insufficient one.

A year ago I felt so uncertain of the authority of Congress in the premises that I introduced a resolution proposing an amendment to the Constitution, giving Congress full power to protect migratory birds. Since that time, and upon a careful study of the matter, I have become convinced that every nation worthy of the name has the power to protect its migratory feræ naturæ.

In the first place wild game is not property. Under the common law and by the decisions of the Supreme Court of the United States, wild game belongs to no one. The right to take wild game from time immemorial has always rested in the sovereignty. A State may prohibit the killing of feræ naturæ altogether, and when killed a State may attach to its use or disposal any condition it may desire. The one thing therefore, which should be borne in mind in the consideration of this subject is that from no point of view is any property or political right involved. No matter how sensitive or how justly jealous any Member of this body may be of the right of his State to enjoy supreme control over the civil, political, or jural rights of its citizens, there is nothing in the pending bill that need give him the least concern. No vested right under the common, State, or Federal law can ever be endangered, effaced, or modified by the Federal protection of the migratory birds of the air. The fact that the States have heretofore assumed and exercised control over wild game, both migratory and nonmigratory, where no discrimination has been suggested or desired, is immaterial, and the fact that there is in the Constitution no expressed grant of such control to the Congress may not be material.

It is worth while to note at the beginning of our consideration of the powers of Congress over this matter that the nations of Europe, as far back as 1873, faced a situation not unlike that which the countries of the Western Hemisphere are now facing. In 1873 the Congress of Agriculturists and Foresters moved "That the Imperial Austrian Government be requested to secure the protection of birds by means of treaties with other states of Europe." In 1875 Germany, Austria, and Italy entered into a joint declaration for the protection of birds. Since that time four international ornithological congresses have been held at different periods in London, Paris, Budapest, and Vienna, and finally, in 1906, 11 European powers ratified an international agreement consisting of 11 articles, which formed a comprehensive code for the protection of birds.

I take it for granted that should Great Britain and Mexico invite the United States to enter into a treaty agreement for the protection of migratory birds, inhabiting at stated periods all three nations, the United States would have the right to accept this invitation.

Mr. Butler, in the latest edition of his work on the Treaty-Making Power, after reviewing the history of the leading cases on the subject, says:

> First. That the treaty-making power of the United States as vested in the Central Government is derived not only from the powers expressly conferred by the Constitution, but that it is also possessed by that Government as an attribute of sovereignty, and that it extends to every subject which can be the basis of negotiation and contract between any of the sovereign powers of the world, or in regard to which the several States of the Union themselves could have negotiated and contracted if the Constitution had not expressly prohibited the States from exercising the treaty-making power exclusively in and expressly delegated it to the Federal Government.
>
> Second. That the power to legislate in regard to all matters affected by treaty stipulations and relations is coextensive with the treaty-making power, and that acts of Congress enforcing such stipulations which in the absence of treaty stipulations would be unconstitutional as infringing upon the powers reserved to the States are constitutional and can be enforced, even though they may conflict with State laws or provisions of State constitutions.
>
> Third. That all provisions in State statutes or constitutions which in any way conflict with any treaty stipulations, whether they have been made prior or subsequent thereto, must give way to the provisions of the treaty or act of Congress based on and enforcing the same, even if such provisions relate to matters wholly within State jurisdiction.

It is a significant fact that there is pending at the present time a treaty with Great Britain which provides for the preservation and protection of food fishes in the boundary waters of the United States and Canada. This treaty includes lakes en-

tirely within State control, as, for instance, Lake Champlain. All this may be true, and yet it will not necessarily follow that Congress can in the absence of a treaty exercise control over migratory birds or fishes. It does indicate, however, that the subject matter is one of national concern and one which the Nation only can control effectively.

Mr. LODGE. If the Senator will allow me, I notice he says the treaty is pending. The treaty has been ratified, but the law to carry out the treaty is pending in the Parliament.

Mr. McLEAN. In this connection, the fact that Congress has in the past assumed the right to regulate the taking of food fishes in waters within State control is very important. In 1871 Congress enacted the following provision—section 4398 of the Revised Statutes:

> The commissioner—

That is, the fish commissioner—

> may at all times in the waters of the seacoast of the United States where the tide ebbs and flows, and also in the waters of the lakes, take such fish, or specimens thereof, as, in his judgment, may from time to time be needful for the conduct of his duties, any law, custom, or usage of any State to the contrary notwithstanding.

Again, in 1887, Congress enacted a law regulating the taking of mackerel on the Atlantic coast. This law was enforced for five years, and its constitutionality was never questioned. Here we have two instances of the clear assertion on the part of the Federal Government of full power to regulate and protect the migratory fishes in waters entirely under State control, "any law, custom, or usage of any State to the contrary notwithstanding." It is true that the Supreme Court has never passed upon the constitutionality of either of these acts. All I claim is that if those laws are constitutional the pending bill is constitutional.

It seems to me that the analogy between migratory birds and fishes is complete, and that the argument in favor of Federal control of migratory birds is much stronger than that which obtains in the control of migratory fishes. Take, for instance, the fishes of Lake Champlain. It is hardly possible that fish hatched within 10 miles of the southern boundary of that lake would ever get within 50 miles of the Canadian boundary, yet we know that the wild goose that may be choosing its mate in the waters of Currituck Sound in March will be in Canada in April unless by permission of some State it is killed in migration. The fishes are confined both by habit and by the element in which they live to a much smaller sphere of migration than the birds. In fact, migratory birds are bounded only by the extent of the atmosphere. Many of them that spend the summer in North America spend the winter in the Argentine Republic, or in some of the distant islands of the sea.

If I am not mistaken in assuming that the Federal Government has to the same or far greater extent the right to protect migratory birds that it has to protect the swimming fishes, the purposes of this bill have been clearly approved by the Supreme Court of the United States in a decision to which I will now call attention.

On February 12, 1912, Mr. Chief Justice White delivered the opinion of the court in the case of the vessel *Abby Dodge v.* The United States. This case arose under the act of Congress prohibiting the taking of sponges by means of diving or diving apparatus from the waters of the Gulf of Mexico or the Straits of Florida. In the opinion the court refers to the case of Manchester *v.* Massachusetts (139 U. S., 240) in the following language:

> Again, in Manchester *v.* Massachusetts (139 U. S., 240), in upholding a statute of the State of Massachusetts regulating the taking of menhaden in Buzzards Bay, the doctrine of the case just cited was expressly reiterated. True, further in that case, probably having in mind the declaration made in the opinion in the McCready case, that fish running within the tidewaters of the several States were subject to State ownership "so far as they are capable of ownership while running," the question was reserved as to whether or not Congress would have the right to control the menhaden fisheries. But here also for the reason that the question arising relates only to sponges growing on the soil covered by water we are not concerned with the subject of running fish and the extent of State and National power over such subjects.

Bearing in mind that in this case the court says, "We are not concerned with the subject of running fish and the extent of State and National power over the subject," we now turn to the case of Manchester *v.* Massachusetts, where the court was concerned with that subject, and I now quote from the opinion in that case delivered by Justice Blatchford (pp. 262–266):

> The statutes of Massachusetts in regard to bays at least make definite boundaries which before the passage of the statutes were somewhat indefinite; and Rhode Island and some other States have passed similar statutes defining their boundaries. (Public Statutes of Rhode Island, 1882, c. 1, secs. 1 and 2; c. 3, sec. 6; Gould on Waters, sec. 16 and note.) The waters of Buzzards Bay are, of course, navigable waters of the United States, and the jurisdiction of Massachusetts over them is necessarily limited (Commonwealth *v.* King, 150 Mass., 221); but there is no occasion to consider the power of the United States to regulate or control, either by treaty or legislation, the fisheries in these waters, because there are no existing treaties or acts of Congress which relate to the menhaden fisheries within such a bay. The rights granted to British subjects by the treaties of June 5, 1854, and May 8, 1871, to take fish upon the shores of the United States had expired before the statute of Massachusetts (Stat., 1886, c. 192) was passed, which the defendant is charged with violating. The Fish Commission was instituted "for the protection and preservation of the food fishes of the coast of the United States." Title 51 of the Revised Statutes relates solely to food fisheries, and so does the act of 1887. Nor are we referred to any decision which holds that the other acts of Congress alluded to apply to fisheries for menhaden which is found as a fact in this case to be a food fish and to be only valuable for the purpose of bait and of manufacture of oil.
>
> The statute of Massachusetts, which the defendant is charged with violating, is in terms confined to waters "within the jurisdiction of this Commonwealth," and it was evidently passed for the preservation of the fish, and makes no discrimination in favor of citizens of Massachusetts and against citizens of other States. If there be a liberty of fishing for swimming fish in the navigable waters of the United States common to the inhabitants or the citizens of the United States, upon which we express no opinion, the statute may well be considered as an impartial and reasonable regulation of this liberty; and the subject is one which a State may well be permitted to regulate within its territory, in the absence of any regulation by the United States. The preservation of fish, even although they are not used as food for human beings but as food for other fish which are so used, is for the common benefit; and we are of the opinion that the statute is not repugnant to the Constitution and laws of the United States.
>
> It may be observed that section 4398 of the Revised Statutes (a reenactment of section 4 of the joint resolution of February 9, 1871) provides as follows in regard to the Commissioner of Fish and Fisheries: "The commissioner may take or cause to be taken at all times in the waters of the seacoast of the United States, where the tide ebbs and flows, and also in the waters of the lakes, such fish or specimens thereof as may in his judgment from time to time be needful or proper for the conduct of his duties, any law, custom, or usage of any State to the contrary notwithstanding." This enactment may not improperly be construed as suggesting that, as against the law of a State, the Fish Commissioner might not otherwise have the right to take fish in places covered by the State law.
>
> The pertinent observation may be made that as Congress does not assert by legislation a right to control pilots in the bays, inlets, rivers, harbors, and ports of the United States, but leaves the regulation of that matter to the States (Cooley *v.* Board of Wardens, 12 How., 299), so if it does not assert by affirmative legislation its right or will to assume the control of menhaden fisheries in such bays the right to control such fisheries must remain with the State which contains such bays.
>
> We do not consider the question whether or not Congress would have the right to control the menhaden fisheries which the statute of Massachusetts assumes to control; but we mean to say only that as the right of control exists in the State in the absence of affirmative action of Congress taking such control, the fact that Congress has never assumed control of such fisheries is persuasive evidence that the right to control them still remains in the State.

Is not this a clear intimation by the Supreme Court of the United States that Congress has the right to assume control of migratory fishes?

In New York *v.* Hill (184 N. Y., 126) the court, in discussing the constitutionality of the Lacey Act, says:

> The object of this legislation—the Lacey Act—was to enable the States by their local laws to exercise a power over the subject of the preservation of game and song birds, which, without that legislation, they could not exert. By the Lacey Act Congress determined to aid the States in the enforcement of their game laws, but did not deem it wise to enact a game law of its own, and this for the very obvious reason that the game laws of the States vary, a variation justified in no small degree by the varying climatic conditions.

I quote this case in order that the Senate may see how easily the virgin minds of the judges of our highest courts accord to the Nation this simple and plain attribute of sovereignty which every nation must have. There seems to have been no doubt in the mind of the Supreme Court of New York that Congress could have enacted a law of its own had it so desired.

In the case of Geer *v.* Connecticut (161 U. S.) and other cases where the court has held that the State has final jurisdiction to protect and regulate the killing of wild game the game involved was in every instance nonmigratory, and the right of the Federal Government to control the taking of migratory birds has, so far as my research goes, has never been denied or questioned. Such observations as the Supreme Court has been led to make in cases involving the authority of Congress over feræ naturæ clearly support my contention as it seems to me.

In considering questions which involve the general powers of the Government it is always interesting to refer to the debates and discussions in the convention that framed the Constitution, but I came to the conclusion some years ago that the Constitution was made by and for strict and loose constructionists alike. Certainly history subsequent to the formation of the Union is full of the names of strict constructionists who, when clothed with high authority, have had the courage to give to the Constitution the loosest possible interpretation when wisdom and patriotism have demanded it. This is as it should be if this Union of States is to be a political and economic success and not a political and economic failure. The foundations were laid by the fathers broad and strong and deep enough to meet the needs of the Nation however great that Nation might become. The fact that the Federal Government has for many years failed to assume or exert a dormant power is of no consequence; neither can any State or the United States lose an inherent right or power by nonuser, and these rights and powers may be

concurrent. A State may and does regulate many matters which are permissive merely and may be suspended at any time by the Federal Government. In the case of Gilman *v.* Philadelphia (3 Wall., 713) the court used the following language:

The States may exercise concurrent or dependent power in all cases but three:

1. Where the power is lodged exclusively in the Federal Constitution.
2. Where it is given to the United States and prohibited to States.
3. Where, from the nature and subjects of the power, it must necessarily be exercised by the National Government exclusively.

It is no objection to distinct substantive powers that they may be exercised upon the same subject. It is not possible to fix definitely their respective boundaries. In some instances their actions become blended. In some the action of the State limits or displaces the action of the Nation; in others the action of the State is void, because it seeks to reach objects beyond the limits of State authority.

The defendants are proceeding in no wanton or aggressive spirit. The authority upon which they rely was given and afterwards deliberately renewed by the State. The case stands before us as if the parties were the State of Pennsylvania and the United States. The river being wholly within her limits we can not say the State has exceeded the bounds of her authority. Until the dormant power of the Constitution is awakened and made effective by appropriate legislation, the reserved power of the States is plenary, and its exercise in good faith can not be made the subject of review by this court.

The junior Senator from Idaho [Mr. BORAH] presented to the Senate during the second session of the Sixty-first Congress Senate Document 417, a statement prepared by the junior Senator from Utah [Mr. SUTHERLAND], which I think is a very conservative and sound statement of the powers of the National Government, and with his permission I quote that document, as follows:

That all necessary power over external affairs should be vested in the National Government was clearly within the contemplation of the framers of the Constitution. The first paragraph of Mr. Randolph's proposed plan was to the effect that the Articles of Confederation ought to be enlarged so as to accomplish the objects of their institution, namely, "the common defense, security of liberty, and general welfare," and the sixth paragraph declared that the National Legislature—

"ought to be empowered to enjoy the legislative rights vested in Congress by the confederation, and moreover to legislate in *all* cases to which the *separate* States are *incompetent*, or in which the harmony of the United States will be interrupted by the exercise of individual legislation." (Madison Papers, 5 Elliott's Debates, p. 127.)

After some discussion this latter paragraph was adopted, and in this form it was reported to the convention from the committee of the whole. In the convention Mr. Sherman proposed to amend it by substituting the words "to make laws binding on the people of the United States in all cases which may concern the common interests of the Union; but not to interfere with the government of the individual States in matter of internal police which respect the government of such States only, and wherein the general welfare of the United States is not concerned." But this was rejected. Finally, on motion of Mr. Bedford, it was amended so as to read, "and moreover to legislate in all cases for the general interests of the Union, and also in those to which the States are severally incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation," and in this form it was referred to the committee of detail (the word "separately" being substituted for the word "severally") as one of the resolutions *to govern them in the preparation of the Constitution* to be finally submitted to the convention. It will be seen, therefore, that it was the unanimous opinion of the framers' convention that power should be conferred by the Constitution upon Congress to legislate in *all cases to which the States were severally incompetent*. It does not appear that the members of this convention at any time changed their opinions, and it therefore must be assumed that in the judgment of these men who framed the Constitution such power was conferred by that instrument. The declared purpose of the Constitution as stated in the preamble is "to form a more perfect union, establish justice, insure domestic tranquillity, *provide for the common defense, promote the general welfare*, and secure the blessings of liberty to ourselves and our posterity." While it is true that the preamble can not be construed as a substantive grant of power, it is valuable as reflecting light upon the powers granted, and the meaning and intent of those who framed and adopted the Constitution. In other words, the preamble states the ultimate objects to be attained by the establishment of the Constitution, and, among them, to "provide for the common defense and promote the general welfare." These are the *ends* to be attained, the powers conferred upon the Government are the *means;* but always the end is more important than the means. The *powers* of government must be commensurate with the *objects* of government, else only a semigovernment has been created.

On page 7 of the same document, 417, Senator SUTHERLAND says:

They were familiar with the great principles which governed the various nations as political entities, and knew that in the eye of international law every sovereign nation was *ipso facto* equal to every other sovereign nation, and that the highest law of every nation was that of self-preservation. Vattel had written in 1758, and this they read: "Whatever is lawful for one nation is equally lawful for another, and whatever is unjustifiable in the one is equally so in the other." Why should any citizen of the great Republic, proud of its strength and glory, desire that *his* government should be inferior in power to any government or less potential in ability to act for the benefit of the people or in the upbuilding of their country and institutions? Such governmenal authority is less to be feared under our institutions than under those of the great monarchies across the sea, because there the government dictates and the people obey, but here the people command and the government obeys, and in the last analysis it is the people who exercise the power through the government which is the servant and agent of the people. It is time we realized, not in phrases alone, but in fact, that the Government of the United States is perfect in all its limbs and not a cripple among the full-grown governments of the world.

The construction of the Constitution has undergone a process of progressive evolution. The earlier decisions of the Supreme Court, notably those written by Chief Justice Marshall, laid down the doctrine of the implied powers, and it was held that Congress possessed not only those powers which were expressly conferred, but implied power to pass all legislation necessary to carry them into effect. But from time to time Congress passed laws not referable to or capable of being implied from any one particular express power, and the legislation was upheld if the authority could be deduced from a number of express powers grouped together, or from the sum total of all of them combined. But Congress has from time to time gone beyond even this and passed laws that by no reasoning can be justified under any or all of the express powers or by virtue of any implication to be drawn therefrom. Some of these acts have been passed upon by the Supreme Court, while others have never been considered by that tribunal. Members of the court have from time to time broadly announced the doctrine that the General Government is one of enumerated powers and can exercise no authority not expressed or implied in the written words of the Constitution, yet some of the decisions can be logically justified only upon the theory that the Government possesses certain powers which result from the fact that it is a *National* Government and the only Government capable of exercising the powers in question. The doctrine is foreshadowed if not stated by Hamilton, when he says: "There are express and implied powers, and the latter are as effectually delegated as the former. There is also another class of powers which may be called *resulting* powers—resulting from the whole mass of the power of government and from the *nature of political society* rather than as a consequence of any especially enumerated power." There is, for example, no express language in the Constitution conferring upon the Government of the United States the power to acquire additional territory. The question first arose in connection with the Louisiana purchase. Mr. Jefferson thought the acquisition unconstitutional. Albert Gallatin, then Secretary of the Treasury, and a statesman and lawyer of great ability, gave it as his opinion that the acquisition was valid, either as an *inherent right* of the United States *as a nation* to acquire territory or as a constitutional right under the treaty-making power. It seems to have finally been determined that this acquisition as well as some others were justified under the treaty-making power."

On page 10 of the same document, 417, Senator SUTHERLAND quotes:

Chief Justice Marshall in Gibbons *v.* Ogden (9 Wheat., 195):

"The genius and character of the whole Government seem to be that its action is to be applied to all the external concerns of the Nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government."

Senator SUTHERLAND, in closing his article on the Powers of National Government, says:

If we are to preserve the great governmental system conceived by the Declaration of Independence and perfected by the Constitution we must realize in feeling and in fact that the rights of the States and the rights of the Nation are not antagonistic but complementary; and that the usurpation by the General Government of any State power over local affairs, and the denial to the General Government of any necessary power over national affairs are equally unfortunate and equally subversive of the spirit of the Constitution, which is the paramount law of State and Nation alike.

Again, in the report of the Judiciary Committee of the Senate on the Federal accident and compensation bill I find plenty of encouragement for taking the position that I do upon this matter, and I quote from that report, as follows:

(5) The Constitution is the same to-day as it was when adopted. It continues to speak with the same meaning, but the application of its provisions is capable of constant extension to meet new and altered social, political, and industrial conditions.

In the same report, on page 27, the committee quotes from the case of Debs (158 U. S., 564, 591):

Constitutional provisions do not change, but their operation extends to new matters as the modes of business and the habits of life of the people vary with each succeding generation.

In the same report, on page 33, the committee quotes from the case of Hurtado *v.* California (110 U. S., 516):

The Constitution of the United States was ordained, it is true, by descendents of Englishmen, who inherited the traditions of English law and history; but it was made for an undefined and expanding future.

No man in the Senate is more jealous of State, municipal, or community government than I am, but it is my belief that the way to preserve and perpetuate State and community control over local affairs is to willingly render to the Nation the things that the Nation alone can wisely and effectively control. Every time the States trust the Nation to do that which the States severally can not do, the States add confidence and strength to their right to retain control of the functions they are best fitted to perform.

While the preamble is not a part of the body of the Constitution, is it not its very soul and spirit? And if some twentieth-century Marshall should put the soul within the body, where it belongs, the throne of State sovereignty would, in my opinion, totter less frequently than at present.

The expressed purpose of the founders was to create a nation—a sovereignty that could provide for the common defense and promote the general welfare. These are the things that the confederation had failed to do. If in the throes of compromise and State jealousies and fears the purposes and main desire of the founders was defeated, then our much-boasted Government "of, for, and by the people" has never existed. If the Nation has not the power to promote by law the general welfare of

the people, then we must conclude that the people in their grant of power to Congress denied to themselves the right to govern themselves wisely and well—denied to themselves the very thing the Constitution was created to secure. If this mistake was made, it is a mistake that will and should be remedied.

As has been well said, this great Nation is not a menagerie consisting of 48 different cages, each cage containing a different species of animal. It is a great Nation, composed of a homogeneous patriotic people.

Mr. President, my contention is that Congress has the implied power as a natural and necessary attribute of its sovereignty to provide for the common defense and promote the general welfare of the Nation whenever the need is general and manifest, and the subject is such that no State, acting separately, can protect and defend itself against the threatened danger or secure to itself those benefits to which it is justly entitled as a part of the Nation. This question, like all others relating to social formulas, soon reduces itself to the simple question of reason and justice, and justice does not have one set of scales for the big things and another for the little things. The same law that causes the apple to fall to the ground keeps the stars in their places; the same simple principle of right that forbids the trespasses of neighbors forbids the trespasses of nations and forbids any State of this Union to encroach upon the natural and just rights of any other State. It is not the right to kill that is paramount. It is the right to the protection which the birds afford; it is the right to preserve the flora, the grain, vegetables, and fruits that is paramount.

The point of first importance in considering questions of this kind is the gravity and imminence of the danger threatened and the extent and nature of the benefit to be derived from the proposed legislation. No one questions the right of the Federal Government to quarantine its ports against the introduction of plagues and contagious diseases. No one questions the right of any State to protect its borders. The question as to whether the Nation and the State have concurrent jurisdiction or whether sole jurisdiction shall be given to the one or the other is the question of competency. If the State, by exerting its authority, can secure to its citizens the protection to which it is justly and fairly entitled, there will be no need of Federal interference except as it may be complementary and at the request and with the approval of the State, but if need for assistance is manifest, if the danger is real and general and it is not within the power of a single State to protect itself and secure the benefits and protection to which it is justly and fairly entitled, then there is, as it seems to me, no escape from the conclusion that the common defense and general welfare of the people must utterly fail unless the Nation can come to the rescue.

So, Mr. President, if it be true that the migratory birds of the Western Hemisphere are worth saving, and I shall assume that they are, is it not equally true that the State of Connecticut is incompetent and powerless to accomplish this result single handed? If it is true that the people of Connecticut are entitled to their share of the benefits resulting from the preservation of the migratory birds of the Western Hemisphere, I insist that however small that share may be the State of Connecticut is utterly incompetent and powerless to preserve and protect it. It must be clear that during six months of each year every one of these birds may be killed with impunity, the laws of the State of Connecticut to the contrary notwithstanding. Mr. President, no State and no group of States can provide the remedy needed. The State is wholly incompetent. The Nation itself is competent to a degree only.

Mr. BORAH. Mr. President, I desire to ask the Senator, in view of the statement he has just made, why it would not be possible for the States individually to afford protection, if they should act in unison and in concert in regard to the matter—that is, if all of them should act upon the subject?

Mr. McLEAN. They have had the experience of a century and a quarter, I suppose, doing the best they could under the circumstances; but in the very nature of the case it is a matter that excites jealousies and retaliations. So far as the broad question is concerned, it is not a State matter; it is not a national matter; it is a continental question; it is a question for the Western Hemisphere to decide, as it seems to me.

Mr. BORAH. Have the States which have petitioned Congress for this action and which have spoken through their game wardens, and so forth, themselves made any effort to protect the situation? Have they laws upon the subject?

Mr. McLEAN. Yes; nearly every State in the Union; and, as the Senator will see from some of the extracts which I have inserted in my remarks, the best efforts that can be made State wise have up to date proven utterly ineffective.

Mr. BORAH. The reason I asked that question——

Mr. McLEAN. State comity can not be exercised because the matter is one which would breed a spirit of retaliation. Each State is anxious to get the most it can, especially of the game birds. As I have told the Senate, in seven States of the Union the robin is to-day a game bird, and is killed by the tens of thousands. It is estimated that in Louisiana alone two years ago 50,000 robins were killed.

Mr. BORAH. Then, where is the law in Louisiana which prohibits that?

Mr. McLEAN. There is none.

Mr. BORAH. That is exactly what I wished to know. The State has not undertaken to do anything at all.

Mr. McLEAN. Only in regard to game birds, and they have a closed season for some of the song birds, but the State laws are like a crazy quilt.

Mr. BORAH. The reason I asked the question was because I have an abiding conviction that when we formed this Government there were no powers of government lost anywhere. A power rests either with the National Government or with the State governments. If the State governments have not the power and can not, in the exercise of the powers which they have, protect themselves in this respect, that is a strong argument, to my mind, why the National Government may have the power; there is a power somewhere. But I do not see that the States have taken any concerted action in regard to this matter at all, and it seems clear that they have the power, but have simply failed to use it.

Mr. McLEAN. None whatever, only to trespass upon each other and kill all the birds they can.

Mr. BORAH. On the other hand, I do not think that the Constitution of the United States can be construed in the light of the negligence of the States. Simply because the States neglect to use their reserved powers constitutes no reason why the National Government should assume to exercise unconstitutional powers. The very fact that the States decline to exercise a power may be an expression, as it were, of their desire that power be not used.

Mr. McLEAN. Mr. President, when we give this question the consideration it deserves, we must see at once that it presents a problem far beyond that of State pride or State sovereignty. It calls for an exercise of authority as far removed from State legislation as Patagonia is distant from Alaska. It is not a State question—it is not a national question; it is a continental question. It does not involve the right of either State or Nation to destroy bird life. It is not the right to kill the robin; it is the right every State and nation has to enjoy its just share of the blessings of Providence—its natural resources. It is the duty of the United States to lead the way now; i. e., go as far as it can and start now, as it was the duty of Austria to lead the way for the European nations 40 years ago. Future generations will never forgive us if we delay this matter longer, and we will not deserve forgiveness if we delay longer. If this law is enacted we may hope and expect that the other nations of the Western Hemisphere will recognize the wisdom and necessity of following our lead, and either by treaty or law bear witness to the fact that American civilization has ceased to recognize the wanton destruction of one of its most beautiful and useful natural blessings and benefits as the right of any man or set of men.

The senior Senator from New York, in a recent address before the Pennsylvania Society, put this branch of the subject where I am quite willing to leave it for the present. In this address the distinguished Senator says:

> The instinct of self-government among the people of the United States is too strong to respect anyone's right to exercise a power which he fails to exercise. If the States fail to furnish it in due measure, sooner or later constructions of the Constitution will be found to vest the power where it will be exercised—in the National Government.

Mr. BORAH. I do not understand that the Senator from New York advocated that that could be done without an amendment to the Constitution; that the neglect of a State to act would give rise rightfully to a new interpretation or justify the construing into the Constitution of a new provision.

Mr. McLEAN. The Senator from New York did not say that.

Mr. ROOT. The Senator from New York was not advocating anything except that the States should perform their duty. He was giving a warning to the States that if they did not perform their duties, if they did not exercise their powers, they might expect sooner or later to lose their powers. It was not advocacy; it was warning.

Mr. BORAH. The Senator from Idaho understood the Senator from New York correctly. The Senator was not arguing that by reason of the failure of the States to do their duty the National Government could constitutionally assume the powers which had been reserved to the States.

Mr. ROOT. Certainly not.

Mr. McLEAN. Mr. President, my point is that no single State is competent to furnish the protection that is necessary.

It is beyond the power of any State to do it, and there is no other way to secure this legislation, which will reach the general welfare, if we can believe anything that these gentlemen who have made a life study of this question tell us, than for the Federal Government to assume control; and we must expect that in due time we shall have a Pan-American agreement in regard to this matter, just as they have in Europe. I do not believe there will be any other way to effectively accomplish the protection of the insectivorous bird.

Now, Mr. President, I want to say just a word about the administration of this proposed law.

ADMINISTRATION.

The administration of this law has been placed in the Department of Agriculture, with certain restrictions as to penalties and other conditions preventing interference with State regulations. This bill provides that the Secretary of Agriculture shall establish certain zones dependent upon climatic conditions and the habits of the birds to be protected and make such regulations within these zones as the law directs.

I am myself opposed to the multiplication of administrative laws or the delegation of judicial powers to commissions unless the necessity is very clear. We have to-day scores of governmental agencies and bureaus clothed with judicial functions, some of them giving wide scope to the discretion of administrative officers. But it does not follow that a lack of caution in one case should demand unreasonable and unnecessary caution in another. Where Government officers and agents are clothed with full authority to seize and destroy private property to the end that the health, morals, and safety of the community may be conserved, injustice and hardship may occur unless the Government agency is of the highest order.

But again I call your attention to the fact that the bill under consideration in no way affects or imperils property or private rights. No harm can come to any citizen unless he destroys life in which he has no property right, and in every such case the constitutional rights of the accused, both as regards his arrest and trial, are left wholly undisturbed.

The only power delegated in this bill is the power to designate and bound the several zones. I am heartily in favor of leaving this matter to the Department of Agriculture, because there is every reason to believe that its officers will act with much more accurate information than can be had by a congressional committee. Indeed, if Congress should undertake to establish the zones provided for in this bill, its best source of information would be the ornithologists and experts in the Agricultural Department.

It is to be borne in mind that this bill is a beginning. Improvements upon the pending legislation will probably come with experience, but the bill as it stands can result in no harm to any human being or his possessions. It has more than an even chance, I think, of becoming one of the most beneficial and highly prized institutions of the country. If anyone is concerned about the expense which may be entailed in the operation of this law, I will call his attention to the fact that since 1903 Congress has appropriated $3,530,284, which has been expended by the Bureau of Entomology in its investigations of insects injurious or beneficial to agriculture, horticulture, and arboriculture:

Appropriations for the fiscal years 1903–1913.

1903.	General expenses, Bureau of Entomology	$45,500
1904.	General expenses, Bureau of Entomology	65,500
1905.	General expenses, Bureau of Entomology	70,000
	Cotton-boll weevil investigations (allotted to Bureau of Entomology)	80,000
1906.	General expenses, Bureau of Entomology	68,060
	Cotton-boll weevil investigations (allotted to Bureau of Entomology)	84,444
1907.	General expenses, Bureau of Entomology	75,000
	Prevent spread of moths	82,500
	Cotton-boll weevil investigations (allotted to Bureau of Entomology)	85,000
1908.	General expenses, Bureau of Entomology	113,800
	Preventing spread of moths	150,000
	Cotton-boll weevil investigations (allotted to Bureau of Entomology)	40,000
1909.	General expenses, Bureau of Entomology	158,800
	Preventing spread of moths	250,000
1910.	General expenses, Bureau of Entomology	198,400
	Preventing spread of moths	300,000
1911.	General expenses, Bureau of Entomology	202,900
	Preventing spread of moths	300,000
1912.	General expenses, Bureau of Entomology	256,950
	Preventing spread of moths	284,840
1913.	General expenses, Bureau of Entomology	328,750
	Preventing spread of moths	284,840
	Exterminating the army worm	5,000
	Total	3,530,284

If Congress can legitimately expend millions of dollars in ineffective and temporary efforts to protect the flora of the country from the ravages of insects, I can see neither economy nor statesmanship in a refusal to use agencies that promise permanent protection to a very considerable extent and at a very slight cost. If 10 per cent of the loss now caused annually by destructive insects can be prevented, it means an annual saving of $80,000,000 to the agricultural interests of the country, and this bill calls for but $10,000. And now, Mr. President, I conclude with a few sentences which will apply to this and several other matters now on the calendar.

Mr. REED. Would it interrupt the Senator if I should ask him a question in regard to this subject?

Mr. McLEAN. Not at all.

Mr. REED. I desire to say, as a preliminary, that I am interested in the bill and believe that some action should be taken in the direction suggested. My question is, Under what clause of the Constitution does the Senator think we can exercise the right to prevent the killing of game?

Mr. McLEAN. I have presented my views with regard to that question.

Mr. REED. I beg the Senator's pardon. I was obliged to be out of the Chamber for awhile and did not hear him. I would not ask him to restate them.

Mr. McLEAN. I frankly said that I did not myself find authority for it in any express clause of the Constitution, but I thought it was one of the implied attributes of sovereignty, based upon the incompetency of any State to accomplish the results desired, and that it is absolutely necessary that any nation worthy of the name shall have this power; and I cited instances of treaties and conventions between European nations. They have there a very complete code for the protection of game birds, and my hope is that the nations of the Western Hemisphere will, when the United States sets the example, quickly follow it.

The Senator will admit that a great many things have been decided as constitutional for which our fathers, at least, found no special constitutional grant, and that is my position. I agree it is fallow ground, and I cited but one case in which the Supreme Court clearly intimated that it was a dormant right that the Nation has a right to exert any time it chooses.

Mr. REED. What I had in mind was this thought: The Federal Government is a Government of delegated powers, and possesses no powers whatsoever except those that are expressly delegated and those necessarily incident thereto. I should be glad if we could find ground upon which to protect migratory birds.

The Senator speaks of the sovereignties of Europe having, by conventions or mutual agreements, protected game birds. In that case each of these nations is a sovereign and possesses absolute power.

Mr. McLEAN. I hope the United States is or will be in due time.

Mr. REED. It possesses absolute power, whereas the United States is a sovereignty limited in its powers by the Constitution. England having the right to do as it pleases with birds——

Mr. McLEAN. Mr. President, I am very anxious to finish my remarks before 2 o'clock.

Mr. REED. I beg the Senator's pardon. I did not know I was trenching upon his time, but if he will permit me to finish that sentence——

Mr. McLEAN. I am willing to yield for a question, but the discussion of this subject, I will admit, if thoroughly gone into by the constitutional experts of the Senate, would take more time than we shall have before 2 o'clock.

Mr. REED. I do not profess to be a constitutional expert. I simply wanted to get the Senator's view. I will take pleasure in reading the remarks of the Senator.

Mr. McLEAN. It is something the States can not do. The State of Connecticut can not protect the migratory birds of the Western Hemisphere; it is something no single State can do. Now, if the Nation has not the power to promote the general welfare in this regard, where the demand is insistent and imminent, all I have to say is that if I were a member of the Supreme Court of the United States I should not hesitate to say that the spirit of the Constitution should be read into its language to that extent.

There is at the present time an ever-increasing interest in and demand for the initiative and referendum. I do not intend to discuss the merits or demerits of these measures, but I think that a very important factor in the genesis of the demand for the initiative and referendum is the feeling among the people that the representative system fails to respond as quickly as it should to reasonable requests for remedial legislation.

I consider Senator Bailey's recent defense of our representative system of government one of the ablest ever made. I was charmed with its force and eloquence. But through it all there

ran in my mind this question, If the system is without fault, why is it that so many honest and able men find fault with it? That there is a widespread dissatisfaction with the fruits of representative government no one can deny. If the system is sound, why does it fail to satisfy? Is it the violin or the violinist that causes the discord? Has the representative system failed or have we failed to understand how to apply it? Congress is the only place to which the people can come for remedial legislation affecting the general welfare. We speak and act for them by their direction and with their consent. We may hold with Burke that it is our judgment and not theirs that will best conserve the interests of the people. We may insist that we are chosen because of our superior knowledge and experience in legislative matters, and it is therefore our duty to resist the unwise demands of the people as a physician would resist the use of injurious drugs, although demanded by his patient. I know that the congressional machine is geared to run slowly, and that for the best of reasons. The 30,000 or more bills now pending in Congress present hundreds of thousands of questions. Many of these questions can not be answered in the affirmative; many of them ought not to be answered at all. The people understand this just as well as we do. They know that Congress is a mill to which chaff is brought in much larger quantities than grain, but they expect us to return to them the best that is possible under the circumstances. They do not want the mill to stop on account of the chaff. It is therefore my opinion that when a measure of great public interest has been carefully considered by a committee and reported back to this body with the recommendation that the measure be favorably acted upon it should be acted upon within a reasonable time.

I have no fault to find up to date with the lack of progress that has attended this bill. I have been a Member of the Senate nearly two years, and I have been profoundly impressed with the spirit of courtesy which governs its deliberations. I do not say that I have ever seen this spirit abused, but it is my belief that the people are not interested as much in this time-honored and chivalrous consideration of our individual importance as they are in securing wise and timely action upon the important measures pending.

So, Mr. President, I feel it my duty to say that I shall ask the Senate to fix a day some time this month in which at least we can agree upon a vote. I think this bill is entitled to a vote this session. It must be manifest that if the friends of this bill are right, the sooner we recognize the necessity of action the better; if the birds are worth saving, we had better save them before they are all destroyed.

I realize that it may be difficult to secure action upon this bill in both Houses this session, but if the Senate will consent to a vote upon this measure, if it gets the support I believe it will have, it may pass this body in time to pass the House; and so I give notice that on Wednesday of next week I will ask the Senate to take up this bill and consider it after the routine morning business, with the hope that at that time there may be an agreement reached for a vote some time during the month of January.

Mr. ROOT. Mr. President, I ask permission out of order to introduce a resolution, and to it I call the attention of the Senator from Connecticut in connection with his very interesting argument.

The PRESIDING OFFICER (Mr. CLARK of Wyoming in the chair). The Senator from New York presents a resolution, which will be read for information.

The resolution (S. Res. 428) was read, as follows:

Resolved, That the President be requested to propose to the governments of other North American countries the negotiation of a convention for the mutual protection and preservation of migratory birds.

Mr. ROOT. I ask that the resolution be referred to the Committee on Foreign Relations.

The PRESIDING OFFICER. It will be so ordered.

Mr. ROOT. I think, sir, that that may furnish a pathway along which we can proceed to some practical relief in regard to the very urgent and pressing evil which the Senator from Connecticut has described. We already have a treaty regarding migratory fish in the Great Lakes and in that system of waters, and it may be that under the treaty-making power a situation can be created in which the Government of the United States will have constitutional authority to deal with this subject. At all events, that is worthy of careful consideration, and for that purpose I open it by the offer of this resolution.

THE PRESIDENTIAL TERM.

The PRESIDING OFFICER. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which is Senate joint resolution No. 78.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (S. J. Res. 78) proposing an amendment to the Constitution of the United States.

Mr. GALLINGER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from New Hampshire suggests the absence of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Crane	McCumber	Shively
Bacon	Crawford	McLean	Simmons
Bankhead	Culberson	Martin, Va.	Smith, Ariz.
Borah	Cullom	Martine, N. J.	Smith, Ga.
Bourne	Cummins	Newlands	Smoot
Bradley	Dillingham	O'Gorman	Stephenson
Bristow	Fletcher	Page	Sutherland
Bryan	Foster	Penrose	Swanson
Burnham	Gallinger	Perkins	Thornton
Burton	Gronna	Perky	Tillman
Catron	Heiskell	Pomerene	Townsend
Chamberlain	Johnson, Me.	Reed	Warren
Clapp	Jones	Richardson	Wetmore
Clark, Wyo.	Kenyon	Root	Williams
Clarke, Ark.	Lodge	Sanders	Works

The PRESIDENT pro tempore. On the call of the roll of the Senate 60 Senators have responded to their names, and a quorum of the Senate is present.

Mr. CUMMINS. I believe that the amendment offered by the Senator from Georgia [Mr. BACON], now in the chair, to the joint resolution under consideration is the pending question.

The PRESIDENT pro tempore. The amendment will be read.

The SECRETARY. On page 2, line 6, before the word "years" strike out "six" and insert "four," so as to read:

The term of the office of President shall be four years.

The PRESIDENT pro tempore. The question is on the adoption of the amendment just read.

EXECUTIVE SESSION.

Mr. LODGE. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After three hours and eight minutes spent in executive session the doors were reopened.

IMPEACHMENT OF ROBERT W. ARCHBALD.

OPINIONS OF SENATORS FILED AND PUBLISHED BY ORDER OF THE SENATE SITTING ON THE TRIAL OF THE IMPEACHMENT OF ROBERT W. ARCHBALD, CIRCUIT JUDGE OF THE UNITED STATES FROM THE THIRD JUDICIAL CIRCUIT, AND DESIGNATED TO SERVE IN THE COMMERCE COURT.

OPINION OF MR. WORKS.

Under the Constitution appointments to office are made "during good behavior." Necessarily, then, bad behavior forfeits the right to longer hold the office. There is but one way to legally terminate the office thus forfeited, namely, by impeachment. The cause of removal must be as broad as the act that forfeits the place. If good behavior is a condition upon which the holder of it is entitled to continue in the office, logically bad behavior affecting his conduct as a judge and the duties and proprieties of the office must be a ground of impeachment.

The claim is made here, and ably and earnestly maintained, that the respondent can be impeached only for high crimes and misdemeanors, and that the word "misdemeanor," as used in this connection, must be taken in its technical legal sense as describing a criminal offense less than a felony. The broader meaning of the word, as defined by lexicographers, is "ill behavior, evil conduct, a misdeed." To give it only the limited meaning contended for would render the Constitution, as it relates to the tenure of office, contradictory and illogical. In fixing the length of the term it is made to depend upon good behavior. In providing for the termination of the office, construed as contended for by counsel for the respondent, it could not be done for any bad behavior, however flagrant or however clearly it showed the holder of the office to be unfit for the place. Thus construed, the officer may commit every possible misdeed not amounting to a crime, and yet the Government be powerless to relieve itself of such an unworthy and unfit public servant. Certainly one sitting as judge in so grave a matter could not give such a construction to the Constitution unless forced to do so by its express and unambiguous terms. That is not so in this instance. In the one clause providing for the term of office the term "good behavior" is used, in the clause providing for impeachment the word "misdemeanor." The definition of misdemeanor in its broader and proper sense is just the opposite of good behavior. To give it this meaning makes the whole provision relating to the subject perfectly logical and

harmonious. In my judgment no other construction can be given it without doing violence to the purpose and intent of its framers. Not only so, but the effect of such a construction is to continue in office a public servant who has clearly forfeited his right to the office by violating the condition upon which alone he is justly entitled to hold it, and would be wrong and unjust to the people whose servant he is.

Then the simple question is, Has the respondent been guilty of such bad behavior, evil conduct, or misdeeds relating to the conduct of his office and his duties as a judge as should deprive him of an office that he is entitled to hold only during good behavior?

Judged by the Constitution, as I am convinced it should be construed, I have no hesitation in saying that the respondent has been guilty of such misconduct as should forfeit his right to further hold his office, and that at least a part of the charges made against him by the House of Representatives are sufficient in law and sustained by the evidence, and that therefore the respondent should be impeached, and I shall vote accordingly.

I am of the opinion that the respondent can not be impeached for offenses committed before his appointment to his present office. The Constitution provides in express terms that judges appointed "shall hold their offices during good behavior." Therefore, if a judge has maintained his good behavior during that time, he has done nothing to forfeit his office. The condition upon which he is entitled to continue in office is good behavior during his service, not before. Conversely, it is only bad behavior during the same time that can forfeit the office or warrant his impeachment. Neither can such misbehavior committed before his appointment warrant a judgment disqualifying him from holding office, because such a judgment can be rendered only on his impeachment, which can not be had for such offenses. Such offenses might show his unfitness to hold office and properly prevent his appointment, but they can not be cause for his impeachment.

STATEMENT OF SENATOR WILLIAM J. STONE.

I requested the Senate to excuse me, and the Senate did excuse me, from voting on articles 7, 8, 9, 10, 11, and 12; and I desire now to state somewhat more fully than I could under the circumstances of the moment, and yet briefly, the reasons for this request. These particular articles of impeachment charge the respondent, Judge Archbald, with having committed certain acts, alleged to be official misbehavior, while he was serving as a district judge in Pennsylvania. He ceased to be a district judge long before these articles of impeachment were preferred or presented by the House of Representatives. I have grave doubt as to whether acts committed by an official while holding a given office can, after he ceases to hold that office, be made the basis of impeachment proceedings. As stated, Judge Archbald ceased to be a district judge long before the acts charged in these articles as misdemeanors were committed. I seriously doubt whether a man in the circumstances of this case can be impeached and removed from another wholly different office. If that course should be established as a fixed policy, I fear it might lead to gross abuses, and I feel that we ought to act with great deliberation, not only with respect to the moment but with respect to the future. It would not be difficult to conceive—having in view what has previously happened in our history—of a case, for instance, where one who had been a district judge had been appointed to the Supreme Bench of the United States, and who thereafter had served for years on that bench without committing any act that could by any possibility subject him to impeachment; yet, under great pressure, when the country was in a state of high political excitement, and when some supposed political exigency was influencing a partisan public opinion, a hostile partisan majority might hark back to some alleged misbehavior of the judge when he held the former minor judicial position and make that the basis of impeaching him. The same rule of practice, if once established, might well be invoked and applied to any other civil officer, including the President, who is subject to impeachment under the Constitution. I am conscious, of course, that plausible reasons may be given to support the contrary opinion, but being strongly inclined to the view above expressed I am unwilling by my vote to establish or sanction the precedent that a man may be impeached for alleged official misbehavior in an office he has long since ceased to hold and to use that as a basis for removing him from another official station in the discharge of the duties of which no complaint is made. I am all the more inclined to take that position on this hearing because of the fact that already the Senate has by a majority vote found this respondent guilty on several articles of impeachment charging him with misbehavior, high crimes, and misdemeanors in the office of which he is now the incumbent; and therefore, as I view it, there is no necessity of going further and giving the sanction of the Senate to a precedent that might be pregnant of danger in the future abuse of it.

STATEMENT OF SENATOR GRONNA RELATIVE TO HIS VOTE ON THE ARTICLES OF IMPEACHMENT AGAINST ROBERT W. ARCHBALD.

Fully realizing the solemn responsibility resting upon me, I have felt compelled to vote to convict Judge Robert W. Archbald on all the charges against him except those contained in articles 6, 10, 11, and 13.

Article 6 charges him with having attempted to use his influence to induce the officers of the Lehigh Valley Coal Co. and the Lehigh Valley Railway Co. to purchase an interest in a tract of coal land belonging to the Everhart heirs. Judge Archbald testified that he did nothing except what was necessary to protect the interests of the Everhart heirs. In my opinion, the evidence offered in support of the charge in this article is insufficient to sustain it.

Article 10 charges him with receiving, while a United States district judge, a sum of money from Mr. Henry W. Cannon, a director in various corporations, for the purpose of defraying the expenses of a pleasure trip to Europe. It appears that Mr. Cannon is a first cousin of Judge Archbald's wife, and that he invited them to take a trip to Europe at his expense, which invitation they accepted. No corrupt intent has been shown either on the part of Mr. Cannon or of Judge Archbald; it has not been shown that Mr. Cannon was interested in any cases before Judge Archbald's court or that Judge Archbald had any reason to believe that any cases would come before his court in which Mr. Cannon would be interested. The near relationship of the parties would seem to offer a sufficient explanation of Mr. Cannon's act, and in the absence of a showing of anything from which a corrupt intent can fairly be presumed, I do not find that the act charged in this article, as proved, is an impeachable offense.

Article 11 charges Judge Archbald with accepting a purse of some $500 contributed by attorneys practicing before his court. It appears that the purse was made up by a large number of attorneys and that the envelope containing it was handed to Judge Archbald as he was embarking for Europe, with the request not to open it until he had been two days at sea. While of doubtful propriety, I do not find that the act proved was, under the circumstances, an impeachable offense.

Several of the acts charged in the articles were committed while Judge Archbald was a United States district judge. The defense has urged that as these acts were committed while he held a different office from the one held when impeached, he should not be placed on trial for these acts. While I realize that there is room for a difference of opinion on this question, I find that in the Belknap case the Senate held that an officer may be impeached and that the Senate will have jurisdiction to try the case even if the said officer resigned from his office prior to the impeachment and was not at the time of the impeachment and trial an officer of the United States. In this case it appears to me there is even stronger reason for asserting the jurisdiction of the Senate; while Judge Archbald was not at the time of the impeachment holding the identical office which he did when the offenses referred to were committed, the office is closely linked to the one he previously held, and the duties he was called on to perform were of the same general nature; his appointment as a circuit judge was in the nature of a promotion. If we were to hold that the Senate can not take jurisdiction over offenses committed while he was a district judge, we should, it seems to me, adopt a rule which, if followed in future cases, might make it impossible to secure the removal of a totally unfit officer if he succeeded in obtaining an appointment to another office before the facts of the offenses which he had committed became generally known. It seems to me that where the Senate has the sole power to try public officers for high crimes and misdemeanors committed by them, it must of necessity assert its jurisdiction at least so long as such officers remain in the public service.

On article 13 I asked to be excused from voting because it is, as I understand it, a repetition of the charges contained in all the preceding articles, on some of which I voted to acquit. In my opinion this article is unnecessary, as all the charges in it had previously been separately submitted to the Senate.

OPINION OF MR. CRAWFORD.

The following facts alleged in the articles of impeachment are admitted by respondent in his answer. They are not in controversy. That is to say, it is established without conflict of testimony that at a time when he was serving in the Commerce Court as a circuit judge of the United States and at a time when the Erie Railroad Co. was a real party in interest in two

suits pending and undetermined in that court, the respondent and one Edward J. Williams, for the purpose of making a profit of two or three thousand dollars each, agreed to cooperate in securing an option to purchase the interest of the Hillside Coal & Iron Co., a subsidiary corporation of the Erie Railroad Co.—together with the interest of one John W. Robertson—in a certain culm dump near Moosic, Pa., known as the Katydid dump; that the particular service to be rendered by the respondent in this undertaking was to secure the option from the Hillside Co.; and by telephone and letters he made his desire known to the superintendent of the company at Scranton, and not being successful there, called at the offices of the general counsel of the Erie Railroad Co.—who was also general counsel for the Hillside Co.—in the city of New York, when he was there holding a term of court as a judge of the circuit court of the United States, and made his desire to secure the option to purchase this dump known to the general counsel; also, on the same day, to Mr. Richardson, one of the vice presidents of the Hillside Co. As a result of his efforts the Hillside Co., which before that time had refused to deal with Williams, gave to him a written proposal to sell its interest in the Katydid dump for the sum of $4,500; all this occurred while these important suits in which the Erie Railroad Co. was a party in interest were pending and undetermined in the Court of Commerce; the respondent had a joint pecuniary interest in this venture with Williams. In my judgment this was misconduct in office and a high misdemeanor.

Respondent also admits that while a certain suit, in which the Delaware, Lackawanna & Western Railroad Co. was a real party in interest, was pending in the Court of Commerce, and while the respondent was serving as a member of that court, and while certain other important cases in which that railroad company was a party in interest and a defendant, and in which the Marian Coal Co., of which Christopher G. Boland and his brothers owned a two-thirds interest, was complainant, were pending before the Interstate Commerce Commission—cases in which the defendant was charged with unjust discriminations and excessive transportation charges—the decision of the commission being subject to review in the Commerce Court, Boland and his brother employed an intimate friend of respondent, an attorney named Watson, who was not their attorney of record in these suits, to make a settlement of the differences in litigation between the Marian Coal Co. and the Lackawanna Railroad Co. and to effect a sale of the property of the former to the latter company, for which services, if successful, Watson was to receive the sum of $5,000; that at the request of Watson, and with the knowledge and consent of the Bolands, the respondent agreed to cooperate with and aid Watson in making this settlement, and in carrying out the joint undertaking he had interviews with Mr. Loomis, vice president of the Lackawanna Co.; wrote him letters about the matter; suggested offering his services direct; recommended a personal conference between Watson and Loomis and Mr. Truesdale, president of the company, remarking that "there is nothing like a personal interview to bring about such a result." He admits that after repeated efforts made by himself and Watson had failed of results Watson met him by appointment in Washington, where the respondent gave Watson a copy of the petition in the Meaker case, in which the Interstate Commerce Commission had made a decision materially affecting one of the questions involved in the suit between the Marian Coal Co. and the Delaware & Lackawanna Railroad Co.; and several days after giving a copy of this petition to Watson, respondent had another interview with Mr. Loomis, of the Lackawanna Co., and urged him to make a settlement with the Bolands. Both Watson and Boland, when urging respondent to assist in effecting this settlement, knew of these suits in the Commerce Court and before the Interstate Commerce Commission; and respondent, when cooperating with them to effect the common result they were all working to bring about, knew that in case of a successful outcome his friend Watson would receive the sum of $5,000. I think this was misconduct in office and a high misdemeanor.

The respondent has also admitted that while he was a judge of the Circuit Court of the United States and acting as a judge of the Commerce Court, and during a period when the Lehigh Valley Railroad Co. was a real party in interest in certain suits pending and undetermined in the Commerce Court, he secured, by personal solicitation from the Lehigh Coal Co.—owned by the Lehigh Valley Railroad Co.—an agreement by which the Lehigh Coal Co. undertook to surrender to him all its rights as lessee for the unexpired term of two years in a lease it held—from a trustee under the will of Stephen Girard, deceased—of a valuable culm dump known as Packer No. 3, near Shenandoah, Pa., owned by the city of Philadelphia, the trustee. This, in my judgment, was misconduct in office and a high misdemeanor.

He also admits that while he was acting as a judge of the Commerce Court the Louisville & Nashville Railroad Co. brought to that court a suit in which it sought to reverse or annul an order made against it by the Interstate Commerce Commission; and that after this case had been orally argued by counsel for both parties and after the record and briefs and arguments of counsel for both parties had been submitted to the court, respondent, without the knowledge or consent of the court, or of any other member of it, and without the knowledge or consent of opposing counsel or notice to them, wrote letters to Mr. Bruce, of Louisville, Ky., a lawyer who appeared in the case as counsel for the Louisville & Nashville Railroad Co. In one of these letters he asked Mr. Bruce to confer with Mr. Compton, one of the officers of the railway company, who was one of its material witnesses in the case, and ascertain if he had not intended to say, "We did not apply it there," instead of saying what the record of the case reported him as saying, "We did apply it there," in testimony concerning the application of a certain combination rate; that Mr. Bruce complied with the request, saw Mr. Compton, and by a letter addressed to respondent stated that Compton meant to say, "We did not apply it there." Respondent inserted this letter in the record of the case in the Commerce Court without notice to the opposing party. In another of these letters he explained to Mr. Bruce that one of the members of the court had discovered certain evidence in the record which it was claimed refuted the argument of Mr. Bruce and sustained the commission, and invited Mr. Bruce to send in further argument to meet this claim. He admits that he received from Mr. Bruce in reply a long letter containing a statement of the contention of the railroad company and that the receipt of this letter and its contents were not disclosed by him to counsel on the other side nor to the other members of the court.

It is admitted also that after receiving these letters from Mr. Bruce and without further hearing or notice to opposing counsel the order of the Interstate Commerce Commission against the Louisville & Nashville Railroad Co. was reversed by the Commerce Court. In my judgment this was official misconduct and a high misdemeanor.

He has also admitted that while he was acting as a judge of the Commerce Court and while the Philadelphia & Reading Railway Co. sustained an intimate relation to the Philadelphia & Reading Coal & Iron Co., the Reading Railroad Co. being a common carrier engaged in interstate commerce, he solicited an interview with W. J. Richards, general manager of the Philadelphia & Reading Coal & Iron Co. and sought to induce Richards to recognize his friend, one Warnke, as the assignee of a certain lease executed by the coal and iron company to other parties, or in lieu thereof to give to Warnke a lease of what was known as the Lincoln culm dump, belonging to the company, and that he had such an interview in the last of November, 1911. He also admits that in December, 1911, this same friend Warnke, as a member of a company known as the Premier Coal Co., had some transactions with the seller of a culm bank known as the old gravity fill, which was purchased by the Premier Coal Co. from the Lacoe & Shiffer Coal Co.; that neither Warnke nor his associates as purchasers understood that they were to pay a commission on the sale, but after they had made the purchase Warnke indorsed a note made by the Plymouth Co. to the respondent for $510, which was delivered to him and which he cashed at a bank. I decide that this is misconduct and a high misdemeanor.

He has also admitted that during the period from September 1, 1908, to the 1st of December, 1908, while he was judge of the District Court of the United States for the Middle District of Pennsylvania, which office he continued to hold until commissioned as an additional judge of the circuit court of the United States, litigation was pending in that court between the Old Plymouth Coal Co., in which one Rissinger and his brother owned a controlling interest, and certain insurance companies, involving about $28,000; and that in September, 1908, negotiations began between himself, Rissinger, and others in connection with a mining scheme in Honduras and were still pending when these cases came on for trial before him in November, 1908; that he denied a motion for nonsuit entered by the counsel for the insurance companies, after which ruling an agreement for settlement was made by the parties and consent judgments entered in favor of the plaintiffs, to be released on payment of the agreed amounts within 15 days after November 23, 1908. He also admits that on or about November 28 he indorsed Rissinger's note for $2,500, which was discounted by a bank in Scranton, and that in February, 1909, he received from Rissinger certificates representing stock issued to him in a corporation or-

ganized by Rissinger and others for the purpose of operating a gold placer mine in Honduras, for which he paid no consideration.

In this I find respondent guilty of misconduct, but it occurred before he became the incumbent of his present office. He had ceased to be a district judge when this charge was filed; and while he was guilty of misconduct, I do not believe impeachment can be sustained on this article for the reason stated.

He also admits that in 1909, while he was district judge of the middle district, a suit was pending before him for a large sum of money against the Marian Coal Co., owned by Christopher G. Boland and his brothers; that while this suit was pending and undetermined, he prepared a promissory note, payable to himself or order for $500, which was signed by one John Henry Jones, of Scranton; that respondent then indorsed the note and gave it to Jones; that he was afterwards told by Jones that this note might be presented to Christopher G. Boland for discount, and that he made no objections; that he also had a conversation with Charles H. Von Storch, president of the Providence Bank of Scranton, in regard to this note, and told him that he had indorsed it; that Von Storch was an attorney at law in practice in Scranton, and that nearly a year before this time, as judge of the circuit court, the respondent had decided a suit, in which Von Storch was a party defendant, in his favor; that the Providence Bank, of which Von Storch was president, discounted the note, which is still unpaid, except that $25 has been paid upon it by Jones.

I find respondent guilty of misconduct, but because it occurred before he became the incumbent of his present office, I do not believe the law would sustain an impeachment on this particular charge.

He also admits that in 1910 while he was a judge of the district court of the United States, and knew that Henry W. Cannon was a director in the Great Northern Railway Co. and president of a steamship company and engaged, among other things, in the mining of coal, and that Mr. Cannon was a full cousin of his wife; with knowledge of these facts, he and his wife became the guests of Mr. Cannon, and at his expense accompanied him for the period of about three months on a trip to Europe, including a visit to Mr. Cannon's villa in Florence, Italy. While I do not find that this act—after the explanation given—was misconduct, it does appear that at the time of his departure on this trip to Europe he received and accepted the sum of $525 from some of the attorneys and practitioners of the court over which he presided as judge; that at the time Edward R. W. Searle was clerk and J. B. Woodward was jury commissioner of the court, and both had been appointed by him, and that Searle collected these donations. I think the acceptance of this money was misconduct in office. Because it occurred before he entered upon his duties as a circuit judge, it can not, in my opinion, sustain an impeachment.

He also admits the appointment of J. B. Woodward as jury commissioner, and that Woodward was and is a general attorney for the Lehigh Valley Railroad Co.; but respondent says he did not know that fact at the time he appointed him and first learned it several years afterwards. He admits, however, that Woodward, with his permission, continued to act as jury commissioner during all the time respondent was judge of the middle district, during all of which time he was general attorney for the railroad company. This was official misconduct, but it occurred before he became the incumbent of the office of circuit judge, and because of that fact alone, in my judgment, it does not sustain impeachment.

In addition to these admitted facts, the evidence submitted to the Senate shows clearly that the respondent entered into business relations with E. J. Williams and John Henry Jones, which not only tended to injure his own personal standing as a man, but tended to bring the court in which he was a public officer of the Government of the United States into disrepute. Both Williams and Jones were insolvents, without credit. Their appearance here as witnesses did not create a favorable impression. Williams, according to the testimony, boasted that Judge Archbald would tell him most anything. He advised John Henry Jones to request Boland to discount the $500 note, executed by Jones and indorsed by Archbald, and told Boland he made a mistake in not doing so, because the Peale case was pending in the United States court and he would have saved all the costs if he had discounted that note. Williams received letters from the respondent introducing him to Mr. Conn, vice president of what was known as the Laurel Line Co., and made offers on behalf of Williams and himself to sell the Katydid culm dump to Mr. Conn. Respondent also wrote letters to Capt. May, of the Hillside Coal & Iron Co., and had personal interviews with May in reference to transactions in which he invited May to deal with Williams as his business associate. He knew the kind of man Williams was. He knew the kind of man John Henry Jones was. Nevertheless the undisputed evidence shows that he allowed his name to be connected with theirs as maker and indorser of promissory notes which were peddled about the streets of Scranton and presented for discount to parties having suits pending and undetermined in the court over which respondent presided as judge. He allowed the world to know that he was willing to maintain business relations with a man like Williams, who, without notice to him, executed an agreement assigning an interest in the options on the Katydid dump to William P. Boland, referring to respondent as "a silent party" in the transaction; business relations with a man who boasted to others of the privileges he had with a Federal judge, and that Judge Archbald could get properties along the lines of the anthracite coal-carrying roads for him; "that he (respondent) had influence with the railroads" (442, 443); business relations with a man who claimed to others that at the time he and respondent were in the joint undertaking to secure an option on the Katydid dump the respondent explained to him the nature of the Lighterage cases pending in the Court of Commerce in which the Erie Railroad was a party, and said he would go to New York and see Mr. Brownell, the general counsel for the Erie, about getting the option; "that he might do him some injury for refusing such a small favor" (166). It is not proven that respondent made these statements, but it is beyond dispute that he maintained business relations with the man and invited others to deal with the man who says he made them and who told other people that he made them.

The undisputed testimony shows further that during the time respondent and Watson were engaged in the prosecution of the joint undertaking to settle the differences between the Marian Coal & Iron Co. and the Delaware, Lackawanna & Western Railroad Co. Watson, in explaining to Christopher G. Boland the reason why he demanded that the Lackawanna Co. pay the Marian Co. more than the $100,000 which had been named by the Bolands, said it was because the respondent "would be very influential in bringing this sale about, and he intended to have him compensated for it" (p. 721).

The undisputed testimony also shows that while both Rissinger and Judge Archbald resided in Scranton, where the $2,500 note executed by Rissinger and indorsed by Archbald in the Honduras mining scheme was made and delivered, Rissinger took that note to Wilkes-Barre during the period between the entering of the judgments against the insurance companies and the expiration of the 15-day stay, and requested his attorney in those cases—Mr. Lanahan, a resident of Wilkes-Barre—to discount it. Mr. Lanahan declined, and made the pertinent inquiry of Rissinger, "Why he should come to Wilkes-Barre, a strange town to him, and not get his note discounted in his own town" (p. 730).

These facts are established beyond controversy, and they convince me beyond any reasonable doubt that the behavior of the respondent as a judge of the district and circuit courts of the United States was not that "good behavior" contemplated by section 1 of Article III of the Constitution; but that on the contrary they show a course of conduct in office which is so clearly reckless and improper that it amounted, to say the least, to misbehavior. The tenure of his office depends entirely upon good behavior, and when that is shown to be wanting respondent's right to hold this high judicial position ends. The only tribunal clothed with the power to hear and determine whether his official tenure shall cease because of misbehavior is the Senate of these United States sitting as a court of impeachment. Section 3 of Article I declaring that the Senate shall have the sole power to try all impeachments, section 4 of Article II declaring that the President and Vice President and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors, and section 1 of Article III declaring that the judges shall hold their offices during good behavior, are each and all entitled to equal consideration in determining the question before this Senate. The acts of the respondent, which I have just enumerated, while not defined by any express law of Congress as crimes, are in their essence and nature public offenses as serious—indeed, more serious—than many other official delinquencies which Congress has declared to be indictable as crimes. The act approved March 3, 1911, prohibits Federal judges from engaging in the practice of law and from accepting employment as counsel, and declares the violation of the act to be a "high" misdemeanor. (36 Rev. Stat., 1161.)

Is it any more of a public offense for a judge to accept employment as counsel or to engage in practice than it is for him to solicit options to buy property from litigants who have causes

pending and undetermined in the court of which he is a member, or to give his opinion concerning the title to a culm dump to aid a sale from which he is to receive a commission or other pecuniary compensation? If the offense described in the act of March 3, 1911, is a high misdemeanor, certainly these acts of the respondent are offenses in the same class and may be designated as high misdemeanors.

The act of Congress approved March 4, 1909, makes it an indictable offense for an agent, having any direct or indirect interest in the pecuniary profits or contracts of any corporation, to be employed by or to act as an officer or agent for the United States in the transaction of any business with such corporation. If it is a public offense for an agent to act as a servant of the Government when his relation to a party dealing with him as the Government's official representative is such as to tempt him to do a wrong or to violate the trust imposed in him by the Government, is it any the less a public offense for a judge, at a time when parties have large interests pending and undecided in his court, to solicit from one of them substantial favors from which he or his friend expects to realize a pecuniary profit?

It seems to me it would come far short of meeting the fair intendment of these provisions of the Constitution if we were to regard as sufficient grounds for impeachment only the committing of indictable offenses by the judge and disregard all others. To such a construction I can not agree. It is for the Senate alone to say how it shall construe the words "other high crimes and misdemeanors"; and it is sufficient to define "misdemeanor" as the lexicographers define it in our dictionaries, where it is given as a synonym for "misbehavior."

The purposes of this trial do not relate to the penalties of some criminal statute; they are to ascertain whether there is sufficient cause for removing this judge from his office. The fact that he fills a high position in the Government and that acts of misbehavior done by him are followed by consequences far more injurious than could possibly follow such acts if done by a person in private life—injuries to the State, justifying so solemn an inquest as the one in which we have been engaged—this, and this alone, distinguishes the offense and brings it within that class known to the fathers as a "high misdemeanor." I am convinced that the respondent is guilty of misbehavior in office belonging to that class of offenses. I therefore find him guilty as charged in the thirteenth article.

OPINION OF MR. OLIVER.

I voted not guilty as to each of the articles of impeachment in the Archbald case for the following reasons:

The only charges which, in my opinion, were at all worthy of consideration were those which charged that the respondent used his influence with certain officials to secure favors for himself or his friends. As to these articles I am satisfied by the evidence that in none of the transactions referred to did Judge Archbald intend that the officials with whom he was dealing should be induced to grant favors either to him or others on account of his judicial position, nor do I think that the evidence establishes the fact that any such officials were in fact so influenced.

I followed the evidence in this case closely. I heard most of it and carefully read that which I did not hear. In my opinion the evidence utterly failed to disclose any corrupt intent on the part of Judge Archbald, and in the absence of such intent I could not see how I could vote to visit upon him the extreme penalties involved in impeachment.

GEORGE T. OLIVER.

OPINION OF MR. M'CUMBER.

Mr. President, pursuant to the resolution of the Senate authorizing any Senator to file within two days his reasons for any vote upon the several articles of impeachment in the case of the United States against Robert W. Archbald, I herewith present and ask to be filed as a part of the proceedings in said case the following:

The said articles of impeachment charged the said Robert W. Archbald in a number of counts with having corruptly used his influence as judge in securing and assisting to secure the sale and transfer of properties owned directly or indirectly by those who had litigation before his court and in attempting to influence parties litigant to settle such cases for the accommodation of his friends.

The general character of these offenses is illustrated in the charge contained in article 1, in which it is claimed that the said judge did induce and influence the officers of a railroad company and a coal company to enter into an agreement to sell a certain coal dump to said judge and another interested with him in its purchase; that he applied to the officers of said company to make such sale; and that at the time of the negotiations for sale the said companies were parties to an action pending in his court.

Judge Archbald admits the facts, but denies the wrongful or unlawful inference charged. The evidence does not satisfy me either that he intended to do an injustice in any of the many acts charged or that he actually influenced litigants to favor him in any way, or that his judicial acts were in any way influenced or affected by the refusal or the granting of any request made by him.

I hold, however, that such acts on the part of the judge of a court were extremely improper; that while they may not have been done with any wrongful purpose, the fact that any person or company had an action pending before his court upon which he might pass judgment might very naturally influence such person or corporation to accede to his request for a favor or his importunities for the sale of property. Every layman knows, and certainly every judge should know, the natural impulse of the human mind to yield favor for favor, benefit for benefit, and often to expect it; and he should equally understand the natural fear to incur the displeasure of one whose power might be exercised to injure.

Such acts were further exceedingly improper because they subjected the court to suspicion and criticism and tended to diminish the faith, respect, and credit that ought to be accorded by the public to all judicial acts.

Had I been compelled to vote directly upon the question, first, whether Judge Archbald had intentionally used his official position for the purpose of securing an undue advantage, or, second, whether he had secured any undue advantage because of his official position in any business matter, I should have been compelled to have voted that the charges had not been established by the evidence.

My vote of guilty upon any article on which such vote was recorded was a vote that Judge Archbald had been guilty of judicial impropriety or misbehavior, and not a vote that such impropriety or misbehavior had improperly influenced either the acts of litigants or his own judicial acts.

The question which then presented itself to my mind was whether official misconduct in order to be an impeachable offense must be of such nature and of such gravity as to constitute an indictable offense or one which could be punished under indictment or other criminal process.

Section 4 of Article II of the Constitution of the United States reads as follows:

> The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

The words, "other high crimes and misdemeanors," in my opinion were intended to mean others of like gravity.

I am aware that at the time of the adoption of the Constitution the practice in the British Parliament did not limit the offenses for which impeachment was had, either to those of the gravity indicated in section 4 of Article II of the Constitution, or to those which were indictable or punishable under the common law. But in the absence of any parliamentary statute defining the offenses for which impeachment would lie, I am of the opinion that in adopting that portion of the Constitution the framers did not adopt or seek to adopt a construction upon it to conform to British precedents. Applying the ordinary rules of construction to the words "treason, bribery, or other high crimes and misdemeanors," as they appear in said section 4, standing alone, I could hardly bring myself to believe that they were intended to mean merely improper or reprehensible conduct.

But, further on in the Constitution, in section 1, Article III, we find the following provision:

> The judges, both of the supreme and inferior courts, shall hold their offices during good behavior.

Who is to determine what is good behavior and in what forum is that determination to be had? The Constitution provides no method of removal from office except through the process of impeachment. As impeachment is the only process by which removal can be had, and as a judge is entitled to hold his office only during good behavior, it necessarily follows, it seems to me, that an impeachment must lie against a judge for an act which constitutes bad behavior, and therefore, taking the Constitution as a whole and giving effect to both section 4 of Article II and section 1 of Article III of the Constitution, that at least so far as the judges of our courts are concerned the provisions of section 4 of Article II are made applicable to acts of judicial misbehavior, even though such acts are not subject to punishment under indictment or criminal process.

Turning, now, to the several articles of impeachment, I found that the charges contained in articles 1, 3, 5, and 6 were established either by admissions or by testimony, and holding,

as I do, that criminal or corrupt intent on the part of Judge Archbald is unnecessary to establish an impeachable offense, I voted "guilty" on said articles.

I hold that the charges contained in articles 2 and 4 were not established by the evidence, or at least that no grave offense was so established, and voted "not guilty" on those articles.

Articles 7, 8, 9, 10, 11, and 12 charge offenses committed while Judge Archbald was judge of the United States District Court for the Middle District of the State of Pennsylvania. They charge offenses committed while Judge Archbald was holding another and distinct official position.

I hold that the purpose of the Constitution in providing for impeachment proceedings was to purge the official roll of the courts of improper officers and nothing further. The Constitution therefore provided that the judgment of the Senate should not go beyond removal from office and disqualification to hold and enjoy office of honor, trust, or profit under the United States. Its purpose was not to inflict punishment, except in so far as such punishment was necessary to accomplish its legitimate end, and therefore impeachment proceedings can not lie against a person for an act committed while holding an official position from which he is separated. Of course, if jurisdiction had been obtained of the case while the respondent was holding the position, resignation by him could not operate to divest the jurisdiction. The jurisdiction to enter judgment of disqualification would continue. I therefore voted "not guilty" on each and all of said articles, 7 to 12, inclusive. It is but proper, however, for me to state that, independent of the legal proposition, I should have been compelled to have voted "not guilty" on some of them, either because the charge did not constitute judicial misbehavior or that such charge was not established. This is especially true as to articles 8, 10, 11, and 12.

Article 13 generalizes and includes all of the specific charges contained in articles 1 to 12, inclusive. I voted "guilty" upon said article 13, but in doing so my vote was intended to express my conviction only as to those specific charges included in article 13 upon which I had already voted "guilty."

More than two-thirds of the Senate having voted the respondent guilty on a number of charges, the Constitution makes it incumbent upon the Senate to enter judgment of removal from office, and I therefore with deepest regret voted to carry that judgment into effect.

I voted against that portion of the order for judgment which disqualified the respondent from holding any official position of honor, trust, or profit under the United States, because this seemed to me to be unnecessary and excessive punishment for the offense. The punishment of removal from office I regard as extremely harsh and excessive for the offenses established by the evidence, and I sincerely wish that a lighter one could have been imposed under the Constitution.

OPINION OF MR. CATRON.

It is my judgment that none of the charges are proper, because they do not charge either treason, bribery, or any other high crime or misdemeanor against the respondent.

Section 4 of Article II of the Constitution of the United States provides:

> The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

It is an invariable rule of construction that where a statute makes acts punishable and in defining the acts selects certain ones by specific designation and provides for all others, as in this case, "or other high crimes and misdemeanors," that the acts or cases embraced under the word "other" high crimes and misdemeanors must be of a similar class to that of those actually mentioned; that is to say, they must be a genus of the same species. The words "other high crimes" can not be construed to mean other crimes than felonies, the two previously mentioned being felonies, and the word "misdemeanors," used in that section, must mean a crime of a lower order of punishment, but it can not mean anything but a crime; it can not mean a mere misbehavior or neglect of duty unless these things are made crimes. This is the universal construction of such statutes unless there be something in the statute which indicates that a different construction was intended; but there is nothing in the section showing that a different construction is intended; on the contrary, the entire context of that section, and of the remainder of the Constitution, indicates that such was the construction which was intended. It is, however, contended that the provision in Article III of the Constitution, which says—

> The judges, both of the supreme and inferior court, shall hold their offices during good behavior—

meant and intended that the want of good behavior should be deemed proper ground for removal under impeachment; but the want of good behavior is not necessarily a crime; nor can one tell what character of misbehavior would be offensive to section 4 of Article III if that was to be embraced within it. No man, let him be judge or otherwise, always conforms to what may be good behavior. As long as mankind are fallible they are liable to depart sometimes from the strict line of absolute "good behavior." It is said that there would be no other way to get rid of a judge who is guilty of misbehavior. There may not be under the Consitution alone, and there may not be because no law has been passed to provide for the removal of a judge for the want of good behavior.

In the enumeration in the Constitution of the powers of Congress the eighteenth clause thereof provides:

> That Congress shall have the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Under this clause the Congress of the United States can enact a law providing that a judge's office shall terminate on account of the want of good behavior and how that shall be determined.

The Congress of the United States has to a certain extent acted under that section. They have provided that judges of the United States courts may be retired from office after they have served a certain length of time and reached a certain age. If the provision of the Constitution which provides that judges shall hold their office during good behavior is to be taken literally, Congress has no power to authorize them to be retired on reaching 70 years of age, after having served 10 years on the bench. But the Constitution, in effect, provides that when a judge is guilty of misbehavior he shall not or may not hold his office any longer. How is that to be determined? Can not Congress, under the clause last quoted, provide by an act some other manner of determining the misbehavior of the judge or the want of good behavior in him? And when that is done the Executive can declare his office terminated and appoint his successor. It is claimed by some Senators that if a judge became insane or incapacitated to perform the duties of his office that he might be impeached and put out of the office, and that that would be the only way to get him out. There are many ways that could be provided for. A statute could be enacted to retire him, as a matter of course, upon such being determined by some competent authority, or even if he was not able to perform the duties of his office the statute might provide for an additional judge in the district where such judge presided, just as it does now provide that the judges of the Supreme Court may be retired upon full pay, at their option, and another judge appointed to fill their place.

Not believing that it is competent to impeach a judge for anything except a felony or a misdemeanor, both of which constitute a crime of a greater or less degree, I can not give my assent to finding the respondent guilty of something which I believe is improperly charged against him. This applies to all of the charges, as in my conception no crime or misdemeanor of any kind has been charged against Judge Archbald.

The charges—Nos. 7, 8, 9, 10, 11, and 12—against Judge Archbald of acts committed during the time that he was district judge and before he became a circuit judge, in my opinion, have no validity in them.

Section 4 of Article II of the Constitution is restricted by the terms of that section to the actual President, Vice President, or any civil officer who is actually such at the time the charges are made, and in my judgment is limited to the acts done by him in that particular office. Judge Archbald, when these charges were preferred against him, had long ceased to be a district judge of the United States, and in my opinion when he was promoted to the office of circuit judge, if he had done anything wrong, all such offenses, whatever they might be, either criminal or amounting to a misbehavior only, had been condoned. The President is supposed to have looked into the private, official, and judicial character of Judge Archbald when he appointed him. In addition to that, his nomination was sent to the United States Senate, and a committee of the Senate took the same under advisement and is supposed to have looked into the character and standing of Judge Archbald and reported to the Senate on the subject. The Senate is supposed to have been satisfied thereon and to have adopted the recommendations of that committee. I do not believe that the House of Representatives had the right to go back of the present office held by Judge Archbald, to hunt up any of his acts to charge against him, so as to remove him from the office he now holds.

In addition to the foregoing reasons, I have made a careful study of the evidence, and I can not find anything outside of a mere, remote supposition, to be surmised from the facts, that

Judge Archbald ever used his official position to accomplish anything which he is charged with having accomplished or attempted to accomplish. There is no proof that he alluded to himself in any way or held himself out in any way as a judge when he was attempting to get the options on the coal dumps or make any of the deals which are mentioned in the charges. It would take a stretch of imagination, in my judgment, to connect Judge Archbald's purpose to use his official position in the cases which he is charged with doing, so as to influence the other parties. It may be possible that the parties dealing with Judge Archbald may have been influenced by his official position, and it may be possible, as was stated by some of the witnesses, in substance, that his character was supposed to have some influence. There is no showing that Judge Archbald did anything further in any of those cases than to use his own personality, and did not call upon his judicial position in any respect. It would seem very strange in the number of acts which are charged against him as using his official position—and all of them charge that—that nowhere did he mention or insinuate that he as judge of the court desired the accomplishment of any of those acts, and I can not give my assent to the fact that we can draw upon our imagination sufficiently to connect the actions of Judge Archbald with an intentional and corrupt disposition to make use of his judicial position to favor his dealings. The charges are that he intentionally, corruptly, and improperly used his judicial position to accomplish those acts, and there is not a scintilla of proof to establish the same. There is a single charge against Judge Archbald in his capacity as a judge, and that is the one which charges him with writing to a lawyer in the Louisville & Nashville case, asking him to interview a witness and get the construction of the testimony that witness had given in the case. As I understand it, the witness in that case before Judge Archbald used language which, if taken alone, meant one thing, but when taken in connection with the other language used evidently showed that there was a mistake in the use of the language of the witness first used, and that the language as shown by the whole of the testimony of that witness was the way Judge Archbald considered it, even before and after the witness had given his version as to what he meant by his testimony. It may be that it was imprudent and impolitic for Judge Archbald to write such letter without interviewing the attorneys on the other side, but if it was a mere imprudence of irregularity did it amount to a crime, or did it amount to such character that Judge Archbald should be held to be corrupt and debased and not fit to hold the office of a judge? It seems that the court reversed itself by changing from its first conclusion, reached before judgment was entered, and taking the opposite ground, favored by Judge Archbald. It may be that this action of Judge Archbald brought about that result, but it was a correct result and an honest result, and Judge Archbald is charged with an offense for getting at the correct and honest facts and conclusion. Although he did it in an irregular and impolitic way, was there anything corruptly wrong or radically wrong in the suggestion to the attorney to send him further authorities on the subject? I do not believe that there is a lawyer in the land that does not, one time or another, without consulting the opposite side, furnish additional authorities to a judge having a case under advisement. It is irregular on the part of the lawyer to do that, and it is irregular on the part of the judge to receive it; yet it is often done. No complaint can be made against it when the opinion reached is a correct opinion and gives the correct results. That is all that can be made out in that case. It is one of those things that was an impropriety. It was not good legal ethics, but, yet, it was not of the character or condition to make the acts of Judge Archbald absolutely vicious, corrupt, and vile, sufficiently so to turn him out of the office and disqualify him forever from holding it.

I do not believe that the evidence establishes that Judge Archbald used his official position corruptly or illegally to accomplish any of the objects which are charged to have been accomplished by him, or attempted to be accomplished by him, and for that reason my opinion is that he is not guilty.

I believe that the guilt of the person accused must be established beyond a reasonable doubt, to the exclusion of every other reasonable hypothesis, and I do not believe that the evidence in this case established anything as to Judge Archbald's methods, either official or otherwise, that made his acts vicious or corrupt or of a criminal character, to the exclusion of every other reasonable hypothesis.

T. B. CATRON.

Mr. SMITH of Georgia. I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 18 minutes p. m.) the Senate adjourned until to-morrow, Wednesday, January 15, 1913, at 12 o'clock m.

NOMINATIONS.

Executive nominations received by the Senate January 14, 1913.

SURVEYOR OF CUSTOMS.

J. Frank Taylor, of Kentucky, to be surveyor of customs for the port of Louisville, in the State of Kentucky. (Reappointment.)

COLLECTORS OF CUSTOMS.

John H. Burgard, of Oregon, to be collector of customs for the district of Portland, in the State of Oregon, in place of Philip S. Malcolm, whose term of office expired by limitation January 9, 1911.

Frank L. Parker, of Oregon, to be collector of customs for the district of Astoria, in the State of Oregon, in place of William F. McGregor, whose term of office expired by limitation June 15, 1912.

UNITED STATES MARSHAL.

E. C. Kirkpatrick, of Oregon, to be United States marshal for the district of Oregon, vice Leslie M. Scott, who is serving under an appointment by the United States district court.

REGISTER OF THE LAND OFFICE.

Harry Y. Saint, of Washington, to be register of the land office at North Yakima, Wash., his term having expired January 11, 1913. (Reappointment.)

APPOINTMENT IN THE ARMY.

SIGNAL CORPS.

Col. George P. Scriven, Signal Corps, to be Chief Signal Officer, with the rank of brigadier general, for the period of four years beginning February 14, 1913, vice Brig. Gen. James Allen, Chief Signal Officer, to be retired February 13, 1913, by operation of law.

PURCHASING AGENT FOR THE POST OFFICE DEPARTMENT.

Frederick H. Austin, of Missouri, to be purchasing agent for the Post Office Department, vice John A. Holmes, resigned.

POSTMASTERS.

INDIANA.

John B. Davis to be postmaster at Poseyville, Ind., in place of John B. Davis. Incumbent's commission expires February 1, 1913.

IOWA.

Arthur Farquhar to be postmaster at Audubon, Iowa, in place of Harper W. Wilson. Incumbent's commission expired January 11, 1913.

MARYLAND.

Frank L. Hewitt to be postmaster at Silver Spring, Md. Office became presidential October 1, 1912.

MINNESOTA.

L. A. Levorsen to be postmaster at Fergus Falls, Minn., in place of Benjamin D. Underwood. Incumbent's commission expired January 11, 1913.

MISSOURI.

Jesse L. Martin to be postmaster at Independence, Mo., in place of William Bostian. Incumbent's commission expired December 17, 1912.

OHIO.

Milton B. Dickerson to be postmaster at Marion, Ohio, in place of Milton B. Dickerson. Incumbent's commission expires February 10, 1913.

Edward Peterson to be postmaster at Bergholz, Ohio. Office became presidential January 1, 1913.

John O. Thomas to be postmaster at Oak Hill, Ohio, in place of John O. Thomas. Incumbent's commission expires February 24, 1913.

OREGON.

Merritt A. Baker to be postmaster at Weston, Oreg., in place of Merritt A. Baker. Incumbent's commission expires January 20, 1913.

Frank J. Carney to be postmaster at Astoria, Oreg., in place of Frank J. Carney. Incumbent's commission expires January 26, 1913.

F. W. Haynes to be postmaster at Roseburg, Oreg., in place of Charles W. Parks. Incumbent's commission expires January 20, 1913.

Edgar Hostetler to be postmaster at The Dalles, Oreg., in place of Edgar Hostetler. Incumbent's commission expires February 18, 1913.

Philip A. Livesly to be postmaster at Woodburn, Oreg., in place of William P. Pennebaker. Incumbent's commission expired January 15, 1910.

John E. Loggan to be postmaster at Burns, Oreg., in place of John E. Loggan. Incumbent's commission expired December 14, 1912.

Thomas McCusker to be postmaster at Portland, Oreg., in place of Charles B. Merrick, deceased.

John F. Miller to be postmaster at Jacksonville, Oreg., in place of Mabel Miller, deceased.

J. H. Peare to be postmaster at La Grande, Oreg., in place of George M. Richey. Incumbent's commission expired January 6, 1913.

Ella V. Powers to be postmaster at Canyon City, Oreg., in place of Ella V. Powers. Incumbent's commission expires January 20, 1913.

SOUTH CAROLINA.

David Hunt to be postmaster at Seneca, S. C., in place of James G. Harper. Incumbent's commission expired January 12, 1913.

Louis Jacobs to be postmaster at Kingstree, S. C., in place of Louis Jacobs. Incumbent's commission expired December 16, 1912.

James F. McKelvey to be postmaster at Fountain Inn, S. C., in place of James A. Cannon. Incumbent's commission expired January 12, 1913.

James P. Metcalf to be postmaster at Inman, S. C. Office became presidential January 1, 1912.

CONFIRMATION.

Executive nomination confirmed by the Senate January 14, 1913.

APPOINTMENT IN THE ARMY.

GENERAL OFFICER.

Brig. Gen. William Wallace Wotherspoon to be major general.

WITHDRAWAL.

Executive nomination withdrawn from the Senate January 14, 1913.

PURCHASING AGENT FOR THE POST OFFICE DEPARTMENT.

John A. Holmes, of the District of Columbia, to be purchasing agent for the Post Office Department.

HOUSE OF REPRESENTATIVES.

TUESDAY, *January 14, 1913.*

The House met at 11 o'clock a. m.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Let Thy blessing be upon us, O God, our heavenly Father, as we pass through the remaining hours of this day. As Thou hast reposed confidence in us, so may we put our confidence in Thee and in our fellow men, shunning the evil, holding fast to the good, doing faithfully and conscientiously the work Thou hast given us to do, leaving the results to infinite wisdom, power, and goodness; and glory and honor and praise be Thine forever. Amen.

The Journal of the proceedings of yesterday was read and approved.

ONE HUNDRED YEARS OF PEACE (H. DOC. NO. 1268).

Mr. KENDALL. Mr. Speaker, a short time ago there appeared in The Outlook an article by HENRY CABOT LODGE, entitled "One Hundred Years of Peace." It is a contribution of so much historical interest that I ask unanimous consent that it may be printed as a House document.

The SPEAKER. The gentleman from Iowa [Mr. KENDALL] asks unanimous consent to print as a House document a certain speech on One Hundred Years of Peace, delivered by the Hon. HENRY CABOT LODGE. Is there objection?

There was no objection.

POST OFFICE APPROPRIATION BILL.

Mr. MOON of Tennessee. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union, for the further consideration of the bill H. R. 27148, the Post Office appropriation bill.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union, for the further consideration of the Post Office appropriation bill, with Mr. GARRETT in the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 27148, of which the Clerk will report the title.

The Clerk read as follows:

A bill (H. R. 27148) making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1914, and for other purposes.

The CHAIRMAN. When the House adjourned last evening an amendment was pending, proposed by the gentleman from Pennsylvania [Mr. GREGG]. The Clerk will report the amendment.

The Clerk read as follows:

Insert as a new paragraph on page 23, after line 20, the following:

"The Postmaster General is hereby authorized and directed to admit to the mails and forward to the delivery office return-reply envelopes and post cards without stamps affixed. Each of said envelopes and cards shall bear upon its face a printed address, a permit number, and the statement 'Postage prepaid; no stamp required,' and that it shall be unmailable if address is altered. All such return-reply matter shall be delivered to the addressee at the delivery post office upon the payment of postage at the rate required by law. The Postmaster General shall require a sum in money or stamps to be deposited in such amounts and at such post offices as he may designate to secure the payment of postage on any and all such return-reply matter received for delivery. In the event of default in payment by the addressee of such postage, the postmaster at the delivery post office shall deduct the amount thereof from the money or postage stamps so deposited and deliver all such mail to the depositor.

"The Postmaster General shall prescribe such rules and regulations as may be necessary to carry immediately into effect the foregoing provision."

Mr. MOON of Tennessee. Mr. Chairman, I make a point of order on that amendment.

The CHAIRMAN. The gentleman from Tennessee makes a point of order on the amendment.

Mr. GREGG of Pennsylvania. Mr. Chairman, I will ask the gentleman from Tennessee to reserve his point of order.

Mr. MOON of Tennessee. I will for awhile.

The CHAIRMAN. The gentleman from Tennessee reserves the point of order by unanimous consent.

Mr. GREGG of Pennsylvania. Mr. Chairman, I might say that there is no question but that the amendment is subject to a point of order. Under existing law those who desire to advertise their wares or merchandise or anything else of a legitimate character are permitted to send through the mails post cards which are mailed as a rule for the purpose of receiving some answer from the person to whom they are sent. The object of this amendment is to permit those who desire to advertise in that way to send out post cards, say in gross quantities, without such postage having been stamped upon the post cards themselves, and to require a deposit, in the post office from which the post cards are sent out of a sum sufficient to cover the postage on the matter sent out.

Now, at first blush it would seem that there would be no particular advantage to the Government in doing anything of that kind, but this matter has for a number of years undergone some investigation on the part of advertisers. The matter came into my hands through a constituent of mine, by whom I was informed that sometime last summer, when the Post Office bill was pending before the Senate Committee on Post Offices and Post Roads, the matter was called to the attention of the Postmaster General. I have inquired of the Postmaster General and ascertained that on July 3, 1912, he wrote this letter to Senator BOURNE, chairman of the Senate Committee on Post Offices and Post Roads, which I send to the desk and ask to have read, and which will throw some light on the question of revenue.

The CHAIRMAN. Without objection, the letter will be read.

The Clerk read as follows:

JULY 3, 1912.

Hon. JONATHAN BOURNE, Jr.,
Chairman Committee on Post Offices and Post Roads,
United States Senate, Washington, D. C.

MY DEAR SENATOR: There is considerable public demand for a postal arrangement by which the postage on return mail matter sent by advertisers and others may be paid at the office of original mailing, but, after careful consideration by this department, the conclusion has been reached that there is no authority under existing law for putting such plan into effect. Believing that the inauguration of such system would provide a needed public convenience, and at the same time increase the postal revenues, I have the honor to recommend that there be inserted in the pending postal appropriation bill legislation therefor in substantially the following form:

"The senders of mail matter who desire to pay postage on replies thereto to the number of at least 2,000 identical pieces are hereby granted that privilege upon their depositing, at the time of mailing, a sufficient sum to pay first-class postage thereon, the payment to be made in such way, and under such regulations, as the Postmaster General may prescribe."

Yours, very truly,

F. H. HITCHCOCK,
Postmaster General.

Mr. GREGG of Pennsylvania. Now, Mr. Chairman, it seems to me that in view of the statement that is made therein by the Postmaster General, this is only a measure to assist, as I think, the business men of our country, the advertisers of our country, and there should be no objection made to this amendment at this time.